



NEW MEXICO CHILDREN'S COURT MEDIATION MANUAL

PROGRAM PROFILE AND BEST PRACTICES

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Program Profile and Best Practices

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I. PURPOSE OF MANUAL

The purpose of this manual is to present the ethics, standards and procedures that govern both the Children's Court Mediation Program and the mediators who provide contract mediation services for the program. The manual represents a consolidation of the "best practices" and serves as both a road map for Courts considering implementation of the program and as a resource manual for current local programs and mediators.

II. PROGRAM PROFILE

A. PROGRAM OVERVIEW

Since March 2000, the Administrative Office of the Courts (AOC) has worked with the New Mexico Children Youth and Families Department (CYFD) to develop the use of mediation in abuse and neglect cases. During the past six years, the Children's Court Mediation Program has grown to include fifteen counties (Bernalillo, Catron, Chaves, Cibola, Grant, Hidalgo, Lea, Luna, McKinley, San Juan, Sandoval, Sierra, Socorro, Torrance, and Valencia) in six judicial districts (2nd, 5th, 6th, 7th, 11th, and 13th). Approximately 1,600 cases have been mediated over the last six years.

Cases are mediated at all stages of an abuse and neglect case from investigation to reunification or termination of parental rights as well as in cases where families are involved with both the protective services and the juvenile justice divisions of the CYFD. A mediator meets with the parents, attorneys, social workers and other interested parties and assists in achieving agreements regarding placement, visitation, treatment and permanency. Mediators must have a minimum of 56 hours of mediation training including 16 hours of specialized training in mediating child abuse and neglect cases.

The flexible organizational structure of the program allows for centralized coordination through the AOC with local autonomy by the district courts. The statewide coordinator supervises local coordinators who work directly with the implementation teams comprised of judges, respondent's attorneys, guardian ad litem (GAL), youth attorneys, CYFD staff and attorneys, Court Appointed Special Advocates (CASA), and other interested parties. The teams are a decision-making body responsible for developing protocol that meets the needs of that particular court. The statewide coordinator works with each site to provide quality assurance by offering ongoing training and education for mediators, professionals and families and program evaluation.

Program quality has consistently improved since 2000 and independent evaluation results have been positive. The ongoing evaluation of the program reports that mediation reduces the time parties spend in post-mediation court hearings and improves the quality of and compliance with treatment plans. Mediation in abuse and neglect cases also facilitates enhanced communication and problem solving by clarifying issues, exploring new options, and providing opportunities for collaboration.

B. PROGRAM DESCRIPTION

The Children's Court mediation program is a resource for families, CYFD staff and the Courts that provides a non-adversarial approach to helping CYFD and the Courts work together with families facing long-term issues such as substance abuse, domestic violence and mental illness to reach permanency solutions for their children.

C. PROCESS DEFINITION

Children's Court mediation is an informal, confidential process in which a neutral third party with no decision making authority assists the parties involved in child abuse and neglect disputes in resolving their concerns, exploring differing points of view, positions and interests. Agreements reached are mutual and focus on the safety and best interest of the child and the safety all family members.

D. PROGRAM PURPOSE AND GOALS

The primary purpose of the program is to assist the Adoption and Safe Families Act (ASFA) goals of permanency, child safety and child well being by:

- Helping to conserve Judicial and CYFD resources;
- Improving the families understanding of and satisfaction with the legal process;
- Improving the quality of and compliance with treatment plans; and
- Increasing options for placement, permanency and services.

The program also supports the New Mexico Judiciary's Mission Statement¹ to:

- Provide access to justice
- Resolve disputes justly and timely; and
- Maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the Constitution of New Mexico and the United States.

E. PROGRAM VISION AND MISSION STATEMENTS

Members of the Implementation Teams in the various judicial districts collaborated on the development of the following Vision and Mission Statements.

Vision Statement

Every child and family in New Mexico has access to facilitated and collaborative problem solving processes.

Mission Statement

We provide conflict resolution services and training to New Mexico's children and families, and the social services, legal, and judicial professionals who serve them.

¹ Mission Statement, Strategic Plan of New Mexico Judiciary, 2006.

F. HISTORICAL BACKGROUND

A Historical Overview of Mediation in Child Abuse and Neglect Cases

The use of mediation in abuse and neglect cases, often referred to as child protection or dependency mediation, began in the early 1980's. The first programs were piloted as voluntary programs in Washington, D.C. and Boulder, Colorado. The initial effort to introduce mediation in the court process was in Los Angeles in 1983 and has since expanded to many courts across the nation.²

Individual programs vary in the way they are structured, the stage at which the mediation occurs, and the issues that are mediated. For example, some programs use volunteer or contract mediators, while others use staff mediators. Mediation is used at various stages both prior to and during litigation in these cases, including prior to adjudication, judicial review, permanency planning, and the termination of parental rights. Finally, some programs mediate only specific issues such as visitation, while others mediate all issues relating to child abuse and neglect.

Recent evaluative studies of child protection programs in California and several programs in Texas have produced the following results³:

- Mediations result in full or partial agreement in at least 70% of cases.
- Participants strongly believe that mediation services save time and money.⁴
- Although mediation is effective at all stage of litigation, it is especially productive earlier in litigation.
- Mediation case plans (treatment plans) are more creative than litigated case plans, often producing more detailed service and visitation plans addressing communication problems.
- Participants are generally quite satisfied with mediation, generally preferring it to judicial hearings.
- Parents find that mediation gives them an opportunity to be heard and understand what is expected of them.
- Mediation programs are generally met with resistance from the professionals involved, although resistance is typically short-lived and professionals generally support continued use of mediation.

² Jan Shaw and Nancy Thoennes, *Child Protection and Dependency Mediation Program Profiles* (Madison, WI: Association of Family and Conciliation Courts 1998)

³ Nancy Thoennes and Jessica Pearson, *Mediation in Five California Dependency Courts: A Cross-Site Comparison* (Denver CO: Center for Policy Research November 1995); Andy Bowman and Carol Nasworthy, *Evaluation of the Children's Justice Act Protective Services Mediation Pilot Projects* (Austin, TX: Texas Department of Protective and Regulatory Services November 1998).

⁴ A study of the Dependency mediation program in San Francisco found that, "Given the settlement rate during the study, sending one case to mediation every working day would present a total annual savings of \$545,225 if we combine immediate savings with the avoided costs of subsequent contested review hearings." *Dependency Mediation in San Francisco Courts* (Denver CO: Center for Policy Research March 1998) p.32. Additional studies regarding court-related mediation programs that indicate is a clear cost savings include: *Evaluation of the Early Mediation Pilot Program*, Heather Anderson, California Administrative Office of the Courts, 2004; *Court-Ordered Civil Case Mediation in North Carolina: An Evaluation of Its Effect*, Steven H. Clarke, Elizabeth D. Ellen and Kelly McCormick. Institute of Government, UNC, 1996.

A review of the literature in this area reveals five primary building blocks for a successful program⁵:

1. Participation in the planning process by representatives from the various groups that will be involved;
2. Support from the judiciary;
3. Trained and skilled mediators;
4. Informed parties; and
5. Adequate funding.

New Mexico has incorporated each of these “building blocks” into its program to use mediation in abuse and neglect cases.

Child Abuse and Neglect Mediation in New Mexico

Phase One: Initial pilot program. Early in 1998, the Court Improvement Project Task Force of the Supreme Court created a committee to look more closely at developing alternative tools and methods for judicial case processing. The committee recommended that the Task Force undertake a mediation pilot project in the First Judicial District. The First Judicial District was chosen because there was local judicial support, an existing pool of experienced mediators, a history of successful alternative dispute resolution programs, and an interest from CYFD attorneys and social workers.

The project was designed and implemented by a team including the CYFD County Office Manager (COM) for Santa Fe County, social workers, CYFD attorneys, respondents’ attorneys, guardians ad litem, CASA’s, court mediators and the Children’s Court Judge. The team developed a plan by consideration of the following issues:

- What is the goal of the mediation program?
- How will success be defined and measured?
- What issues will be mediated?
- How will confidentiality concerns be addressed?
- Will mediation be mandatory or voluntary?
- Who will mediate, with whom, and where?
- What kind of training and education needs to be done and with whom?
- How much will the pilot program cost and what are possible sources of funding?

In November of that year, three mediators and the project coordinator attended a “dependency mediation” training program in Colorado Springs, Colorado. In early December, social workers, supervisors, attorneys and others attended a one-half day orientation and training. By mid-December, the first cases were being mediated.

⁵ Sources: *Dependency Mediation in the San Francisco Court*; *Family and Conciliation Courts Review*, Volume 35, No. 2, April 1997; *Mediation in Five California Dependency Courts*; National Symposium on Court Connected Dispute Resolution Research, National Center for State Courts State Justice Institute, 1994.

The pilot project ended in June of 1999 and was evaluated with overall positive results. Participants reported that mediation was constructive and produced full or partial agreements in the majority of cases. There was virtually unanimous agreement that mediation should continue to be offered and expanded to include pre-permanency and TPR issues.

Phase Two: Pilot programs in 2000. Following the success in the First Judicial District Court, several other judicial districts expressed interest in using mediation in abuse and neglect cases, and in March 2000 the Administrative Office of the Courts (AOC) received a grant from CYFD to pilot “court-connected mediation in abuse and neglect cases.” The first grant period ran from March 1 to August 31 and initially included five pilot courts: the Second Judicial District (Albuquerque); the Third Judicial District (Las Cruces); the Fifth Judicial District (Lea county only); the Sixth Judicial District (Grant county only); and the Ninth Judicial District.

The grant required that an Implementation Team be created in each participating pilot site. The Team included a judge, respondent’s attorney, guardian ad litem, social worker, CYFD/PSD COM, CYFD attorney, and CASA. Each Team was responsible for developing a mediation plan to meet the needs of that particular court. The plan included:

- A process for assigning cases to mediation;
- A process for scheduling the mediation;
- Identification of required and optional mediation participants;
- The location of the mediation session;
- A description of the mediation process, including agreement as to the length of the mediation, an evaluation plan, and a process for monitoring the project; and
- A process for selecting the mediator. Mediators must have a minimum 40-hour basic mediation training as well as an additional 16 hours of advanced training in mediating abuse and neglect cases.

There emerged three other important components to each pilot site: (1) mediator training, (2) participant training, and (3) evaluation. First, skilled and professional mediators are critical to the success of each pilot project. Recognizing this, the grant provided funds to hire a professional mediator with experience mediating abuse and neglect cases to provide training to New Mexico mediators.

Second, mediation participants who understand and are well informed about the process are also critical to a successful program. Thus, the grant required that mediation participants be offered information and training about mediation in general and about mediation in abuse and neglect cases.

Finally, the grant required the collection of evaluative data on each site, recognizing that there would be little “hard” data available at the end of the pilot project.

By the end of August 2000:

- Mediators had been trained.
- "Participant trainings" had been offered in Silver City, Hobbs/Lovington, and Albuquerque.
- Implementation plans had been drafted for the 2nd, 5th and 6th Judicial Districts.
- The 3rd and 9th Judicial Districts had decided not to implement mediation.
- The 6th Judicial District had mediated three cases and the feedback from all participants was positive.
- The remaining pilot courts had scheduled mediations for September 2000.

Phase Three: Program Expansion 2000-2005. Following the success of the first pilot project, several other judicial districts contacted the AOC about implementing the mediation program. By 2005, with the continuation of the CYFD grant and state funds from the local judicial districts and the AOC, the program had grown to include fifteen counties (Bernalillo, Catron, Chaves, Cibola, Gallup, Grant, Hidalgo, Lea, Luna, San Juan, Sandoval, Sierra, Socorro, Torrance, and Valencia) in six judicial districts (2nd, 5th, 6th, 7th, 11th and 13th). Referrals have steadily increased each year from 115 during the first full year of the project to 399 cases for 2004-2005. Approximately 1,500 cases were mediated from June 2000 through December 2005.

The program has also expanded to provide families greater access to mediation. Where cases were initially mediated only at the "legal" stage (i.e. once a child had been removed from the home), they are now being mediated at the investigation and pre-legal stages as well as in cases where families are involved with both the protective services and the juvenile justice divisions of the CYFD. The program has also developed bi-lingual materials, including a brochure and videos for both families and professionals.

In addition, program quality has consistently improved since 2000 and evaluation results have been positive. For the past five years, the AOC has provided CYFD with an evaluation of the mediation program. Due to the significant decrease in funding in 2004-2005, the AOC was unable to contract with an independent evaluator and conducted an internal evaluation. Program evaluation findings are consistent with those from other states⁶:

- Mediation conserves both judicial and CYFD resources by reducing the amount of time parties spend in post-mediation court hearings.
- Families are given "voice" through the mediation process, feel safe to express themselves, and are more involved in treatment planning.
- Mediation increases the number of options available to the parties, and families who attend mediation are more likely to comply with their treatment plans.
- Mediation results in better communication between families and professionals.

⁶ Thoennes and Pearson, *Mediation in Five California Dependency Courts*, 1995; Bowman and Nasworthy, *Evaluation of the Children's Justice Act Protective Services Mediation Pilot Project*, 1998; *Dependency Mediation in San Francisco Courts*, 1998.

- The court process has become less adversarial and less litigious as all parties become more familiar with the mediation process.
- The success of the mediation program depends in large part upon the support of the judiciary.
- Mediation may require more “up front” time from attorneys but may result in less time being required later in the case.

Phase Four: Search for stable funding, 2004-2005. Since 2000, the primary source of funding has been through a CYFD grant (Title IV-B funds). The funding was significantly reduced during the grant periods 2003–2004 and 2004-2005, and although referrals continued to increase and evaluation reports were consistently positive, the long-range plan to expand the project was curtailed and the focus became maintaining the status quo while exploring alternative funding sources. Collaboration with CYFD offices and supplemental funding from the local district courts in the form of cash or in-kind services allowed the program to continue to provide quality mediation to families in each site.

In an effort to secure permanent funding, the program worked with the AOC and other stakeholders in support of the *1% for Children Initiative* during the 2005 legislative session. As a result, the AOC secured some general funds for FY2006 to cover administrative costs for the program and mediation services, and the program was able to renew its grant with CFYD.

During the 2006 legislative session, the program’s continued collaboration with CYFD, the judiciary and legislature led to an increase in both state recurring funds and its CYFD grant. This additional funding will allow the program to contract for an independent evaluation, increase training for mediators and professionals, and to expand into three additional judicial districts, the 4th (San Miguel, Guadalupe, and Mora Counties), the 8th (Taos, Colfax, and Union Counties) and the 12th (Otero and Lincoln Counties) in 2006-2007. Some of the local district courts and CYFD offices continue to contribute supplemental funding through direct funds or in-kind service.

The primary goals for FY2007 are to strengthen the Children’s Court mediation program through a more comprehensive evaluation, additional training, and the implementation of best practices to all districts. In addition, the program will continue to work with CYFD and the judiciary to seek additional funding to complete the full expansion of mediation services to the remaining three judicial districts (3rd, 9th and 10th) and to ensure the continuation of the opportunity for New Mexico families to fully participate in decisions being made about their lives.

III. PROGRAM BEST PRACTICES

A. KEY PROGRAM COMPONENTS

The success of the Children's Court mediation program is due in large part to the strength of the model. Research from other states, as well as the experience of the New Mexico Court Improvement Project's pilot mediation project and the subsequent evolution of the Children's Court mediation program, has identified six elements essential to a successful program: (1) a well-defined organizational structure; (2) judicial support; (3) high quality mediators; (4) educated and informed professionals; (5) quality assurance; and (6) stable funding.

Below is a description of these key components.

Central Coordination with Local Autonomy

During the pilot phase of the mediation program, several strategic planning meetings were held to explore organizational models that would ensure the long-term viability of the program. Attorneys, mediators, and representatives from the CYFD, and the AOC discussed possible structures and agreed on the importance of the following elements:

- Centralized oversight, accountability, evaluation, training, and technical assistance with localized program control, flexibility, and day-to-day management;
- Ongoing and positive relationships with state agencies (e.g. the courts and CYFD) and the possibility of sharing or "reallocating" existing resources rather than asking for new monies;
- Ongoing and positive relationships with the mediator and other ADR communities; and
- Diversified funding and the ability to respond quickly to funding opportunities and to partner with other agencies in obtaining funding.

A flexible organizational framework was established to allow for centralized coordination through the AOC with autonomy by the local judicial district courts. The statewide coordinator collaborates with the AOC liaison (the Court Services Division Director) to supervise the contract local program coordinators and court and CYFD staff to implement the program on the local level. They, in turn, work directly with the implementation teams comprised of judges, respondent's attorneys, GAL, Youth Attorneys, CYFD staff and attorneys, CASAs, and other interested parties. The teams are the primary decision-making body responsible for developing protocol that meets the needs of that particular court and CYFD county office. In addition, the statewide coordinator works with the AOC to provide network services that include technical assistance and quality assurance by offering ongoing training and education for mediators, professionals and families and statewide program evaluation.

Support of Local Judiciary

The support of the local judiciary is essential to the establishment and ongoing health of the mediation program in local courts. The individual interest and backing of the local Children's Court Judge (or District Court Judges who hear child abuse and neglect cases) is crucial to get the program off the ground. Attorneys, social workers, and other professionals involved with child abuse and neglect cases are often initially resistant to mediation and most local programs often begin with referrals by the Court. However, once they participate in mediation, the professionals typically become very supportive of the mediation process.

Competent and Professional Mediators

The success of the program depends in large part upon the skill and expertise of the mediators. Mediating child abuse and neglect cases is difficult. Emotions often run high as parents are faced with the possibility of permanently losing their children. The social services and legal systems are complex and confusing to families involved in these cases. Families may feel helpless and powerless in a situation that seems to leave them little choice. At the same time, the social workers, attorneys, CASAs, and treatment service providers may also struggle with the professional and personal challenges associated with abuse and neglect cases. The mediator must create an environment where each person has an opportunity to speak and be heard, where emotions are acknowledged and issues are identified, and where mutually acceptable and realistic agreements are reached.

To ensure high quality mediation services, the program requires that all mediators have a minimum of 56 hours of mediation training, including 40 hours of basic mediation training with an additional 16 hours of training in mediating abuse and neglect cases provided by the AOC. In addition, all mediators mediating permanency cases involving open adoption must attend all specific permanency/open adoption trainings.

The mediators come from a variety of backgrounds including business, education, social work, counseling, and the law. As a group, they have experience mediating family, divorce, custody, business, magistrate court, victim-offender, special education, employment discrimination, and workplace dispute matters.

Informed and Educated Professional Participants

"Buy-in" from attorneys, social workers, treatment services providers, CASAs and others is essential during both the planning and implementation stages. Unlike other types of mediation, participants in abuse and neglect cases tend to be "repeat players," and are often involved in numerous cases. Given the ongoing nature of their participation in the process, it is important that the professionals understand basic mediation principles and their own role in the mediation. Once a plan has been developed, the program provides a "participants' trainings" for the professionals who may participate in mediation on a regular basis.

Quality Assurance

To ensure the delivery of consistent, high quality mediation services, the program provides ongoing training and education for mediators, professionals and families, and program evaluation. The statewide coordinator and the AOC have established the parameters for and monitor program evaluation and assessment of outcomes, mediator qualifications and assessment, and ongoing training and education for mediators, professionals and families. The program works with independent evaluators to review and revise the evaluation plan, as funds permit.

Stable Funding

Stable funding is also fundamental to the success of the mediation program. It is difficult to attract competent mediators and secure the trust and confidence of the parties and the courts in the absence of a stable funding source. As with many other dependency mediation programs nationwide, the Children's Court mediation program has worked in partnership with the judiciary, CYFD and the legislature to create a balanced fiscal plan. The program is currently funded by state recurring funds, an ongoing grant of Title IV-B funds from CYFD and supplemental in-kind support from CYFD and local judicial district courts.

B. THE IMPLEMENTATION PROCESS

The Children's Court mediation program has developed the following steps to create and implement a successful local mediation program:

Step One: Gain Judicial Support

Participation of a willing and supportive judge is the first step. Typically, a local judge or court administrator contacts the AOC or the statewide coordinator with an interest in the mediation program. The statewide coordinator (or local coordinator if the expansion is within an established judicial district) then meets with the local judge(s) and court administrator to provide information, answer questions, and confirm interest in developing a program.

Step Two: Recruit a Local Program Coordinator

Local on-site coordination is a real asset to a program. The Court and the statewide coordinator will work together to determine if there is staff available to fulfill this function or if the AOC needs to contract for these services. The local coordinator, under the direct supervision of the statewide coordinator, works with the implementation team and mediators to implement the plan and assist with the ongoing monitoring of the program. See **APPENDIX A - List of Local Coordinator Duties**.

Step Three: Form an Implementation Team

The statewide and/or local program coordinator works with the Court and CYFD to form an Implementation Team to develop a plan for the program and to oversee the plan's implementation. The Team includes representatives from all stakeholder groups,

including Judges, Court Administrators, CYFD staff, Respondent Attorneys, GALs, Youth Attorneys, CASAs, Mediators, and the Citizen's Review Board (CRB).

Step Four: Develop a Plan

The statewide coordinator and/or a local program coordinator works with the team to develop a plan that best meets their needs. The plan should include, at a minimum, the following information:

- Case referrals. (I.e types of cases to be mediate, pre-legal and legal.)
- Scheduling process. (Who can make referrals and how, who is responsible for filing and/or notification, who may attend, logistics, etc.)
- How mediated agreements will be handled.
- Mediator qualifications aligned with the statewide program and any additional qualifications.
- Mediator list.
- Implementation Team list.
- Reporting process aligned with the statewide program
- An evaluation plan aligned with the statewide program.
- All related forms.

For more specifics on developing a plan, see **APPENDIX B - Plan Development and Sample Program Plan**.

Step Five: Establish the Mediator Pool

The statewide and local coordinators will recruit and train mediators to establish a local pool of qualified mediators. Due to the challenge of cultivating high quality mediators in more rural communities, a program may need to access mediators from other judicial districts for a period of time.

Step Six: Train the Professionals

The statewide and local coordinator will provide the professionals involved in child abuse and neglect cases with an orientation to the mediation program and introduction to the mediation process. These participant trainings or workshops may be repeated as needed.

C. PROGRAM PROTOCOL: HOW THE PROGRAM WORKS

Implementation Teams for each local program may determine specific program procedures including the types of cases referred, scheduling process and logistics, but Children's Court mediation programs abide by the following general protocol.

Case Referrals

Generally, all child abuse and neglect cases from investigation (i.e., pre-legal, prior to a legal filing) to reunification (i.e., child are returned home) or the termination of parental rights, may be assigned to mediation as follows:

- Pre-legal Cases - CYFD may request mediation at any time during the investigation stage by contacting the Local Program Coordinator and the following the process as per the local plan.
- Legal Cases - Mediation may occur at any time during a legal case by either following the referral process, or through a court order, as per the local plan. Mediations are generally scheduled in the place of any scheduled pre-hearing meetings (e.g., pre-adjudicatory and pre-permanency hearing meetings).

Who May Request Mediation

At any time after filing any interested party, as defined by the New Mexico Abuse and Neglect Act (34A-4-1, 1978), may request mediation. If all parties agree to mediation, the Children's Court Attorney (CCA) will prepare and file a stipulated "Order for Mediation." The Court may also issue an "Order for Mediation" at any stage during a legal case. The Order will include provisions requiring that all parties attend the mediation, a confidentiality statement, and the location, date and time of the mediation.

Notification Process

Generally, when a judge signs the "Order for Mediation," the CCA will mail endorsed copies to the parties entitled to notice including, Respondents' Attorneys, GAL, Youth Attorney, Social Worker, CCA, CASA, Citizen's Review Board, and the Local Program Coordinator.

Where Mediations Are Held

Mediations typically take place at either the local judicial district courthouse or the CYFD offices. Mediators may also schedule mediations at other locations with agreement by all parties.

Who Attends

Mediation participants may include the Respondents, Respondents' Attorneys, GAL, Youth Attorney, Social Worker, Social Work Supervisor, CCA, CASA, Treatment providers, children when appropriate, extended family members, and any others as agreed upon by the parties.

Mediation Process

There is no specific model for a Children's Court mediation session. The required specialized training reinforces the fundamentals of the mediation process and encourages mediators to utilize a variety of techniques to assist the parties in clarifying issues and achieving agreements regarding placement, visitation, treatment and permanency.

Once a case has been screened for appropriateness and referred to mediation, mediators will follow a similar process. The basic elements of Children's Court mediations include:

- Preparation
- Introduction
- Sharing Information
- Problem Solving
- Agreement Writing
- Follow-up

The following steps are generally used in the mediation process, although there may be some variation. All steps are not always used and they are not necessarily used in a specific or linear fashion.

- Mediator case management.
- Pre-mediation.
- Opening statement and Introduction.
- Mediators help parties set an agenda.
- Participants discuss issues, typically one at a time.
- Mediator may meet with parties individually (caucuses) to discuss issues.
- Parties reach agreement one issue at a time, though some issues are linked
- Mediator will reality test, check for accuracy, etc.
- An agreement is drafted by the mediator or attorneys for review, signatures and submission to the court.

The specific issues that may be discussed during mediation include:

- Whether the complaint of abuse and neglect should be dismissed.
- Children's issues (e.g., behavioral, education, medical, psychological).
- Services for children (e.g., counseling, medical services, mentoring).
- Services for parents (e.g., counseling, drug or alcohol assessment and treatment, parenting classes, employment and housing referrals, financial assistance, transportation).
- Temporary and permanent placement of the children.
- Visitation by parents, siblings, and other relatives and arrangements for supervision and transportation.
- Goals for children (e.g., reunification, adoption, independence).

Most mediation sessions are scheduled for two hours, although cases that involve permanency issues may last longer and include multiple meetings.

For more specifics regarding mediation procedures, mediator checklists and mediator policies and procedures, see **APPENDIX C - Mediation Procedural Documents**.

Confidentiality

While many states have mediation confidentiality statutes, New Mexico currently does not have any specific statute defining the parameters of confidentiality in mediation. Mediation, however, is generally considered to be a “compromise negotiation” pursuant to Rule 11-408 NMRA of the Rules of Evidence, which provides that any opinions, admissions and comments made during such proceedings are confidential. This rule does not require the exclusion of any evidence otherwise discoverable merely because it was presented in the course of settlement negotiations.

To reinforce the confidentiality of the mediation process, orders used in the mediation program include provisions stating that mediation proceedings shall be held in private and shall be confidential, with the exception that any new information, i.e. information that is not already known by the appropriate authorities, regarding injury or neglect to a child or an adult shall be reported. The orders also include a provision clarifying that all communications, verbal or written, between the parties and the mediator will be inadmissible in any Court hearing. In addition, confidentiality is further supported by language in the Report of Mediation that is filed with the Court following all mediations in legal cases. See **APPENDIX D – Mediation Related Forms**.

Agreements

- Pre-legal cases. If an agreement is reached during mediation in a pre-legal case, the mediator is responsible for facilitating the written agreement, signed by all parties. The parties are responsible for enforcing the terms of any agreement.
- Legal cases. If an agreement is reached during mediation, the mediator is responsible for assisting parties with drafting a written agreement for review by all parties. Typically, the CCA is responsible for securing signatures and ensuring that the agreement is filed with the court and/or entered into the court record. The court will monitor the enforcement of any agreement between the parties and the CYFD.

Mediator Pool and Selection

The local program coordinator maintains a list of qualified mediators, approved by the Implementation Team. The list is distributed to all members of the Implementation Team, Department attorneys, Respondent attorneys, etc.

Mediators are considered in alphabetical order and appointed at the discretion of the local program coordinator.

Evaluation Plan

All local plans include an evaluation plan that is aligned with the ongoing statewide program evaluation and overall quality assurance plan described below. Data collection includes three primary components: Family/Case Records, Mediation Process Records, and an assessment of outcomes. Independent evaluations are conducted, as funding permits, and the program consults with independent evaluators to revise the evaluation plan, as needed. See **APPENDIX E–2005 Annual Report and Evaluation**.

D. QUALITY ASSURANCE PLAN

In order to provide high quality mediation services, the Children's Court mediation program's quality assurance plan includes the following components:

Monitoring and Evaluation

The mediation program performance is monitored through a variety of methods including the ongoing collection and analysis of evaluation data and direct supervision of the statewide and local coordinators. The sources of qualitative and quantitative information used to evaluate the program and provide outcome reporting include:

- Participant feedback from families and professionals;
- Mediator case records;
- Mediator observations and mentoring feedback; and
- Court and CYFD records.

Specific data captured includes the number of cases, who attended, hours spent, total cost, issues mediated, demographic information about the families, levels of agreement and satisfaction. The forms used to collect data are standardized for use throughout the statewide program. See **Appendix F - Mediation Outcome Reporting Forms**.

Assessment of Outcomes

The mediation program analyzes the data collected to assess the following outcomes:

- Compliance of (parents/CYFD) with treatment plans (e.g., referrals made, appointments kept, evidence of treatment success, visits between parent and child/SW and parents/SW and child);
- The impact on case disposition time (e.g., decreased overall time from custody to dismissal, shorter time between various court hearings and related events);
- The impact on time social workers must spend revising treatment plans (e.g., fewer or shorter staffings, fewer plan changes);
- The impact on conservation of judicial resources (e.g., less time spent in preparation, less time spent in hearings);
- The impact on quality of treatment plans (e.g., increased options for placement, permanency, and services);
- The impact on the families' understanding of the legal; and
- The impact on all participants' satisfaction with the process.

Other methodologies the program may consider for evaluation purposes include: the random assignment of cases to mediation and to traditional litigation process; a comparison of cases terminated before the mediation program began with cases terminated after the program began; and a comparison of matched mediated and non-mediated cases.

Mediator Competency

The Court's goal to provide consistent, high quality mediation services requires that mediator performance will be competent (at minimum) and preferably excellent. All local programs use the family feedback forms, participant survey and periodic observations of mediators by local program coordinators to assess and maintain mediator quality. See **APPENDIX G – Mediator Assessment Instruments**.

Mediators are required to perform duties in compliance with the New Mexico Mediation Association (NMMA) Code of Ethical Conduct and the Model Standards of Conduct for Mediators prepared by the American Bar Association (ABA), American Arbitration Association (AAA), and the Association for Conflict Resolution (ACR). See **APPENDIX H - Model Standards of Conduct for Mediators**.

Mediator Qualifications

The mediators contract with the AOC at a rate of \$50 per hour and must have completed the 40-hour basic mediation training, plus an additional 16 hours of training in mediating abuse and neglect cases including information regarding the New Mexico Children's Code and CYFD policies and procedures. The training is provided by the AOC at minimal or no cost and both Continuing Education Units (CEU) and Continuing Legal Education (CLE) professional continuing education credits are available. Local implementation teams may establish other requirements such as additional mediation and/or facilitation experience and understanding of the New Mexico Children's Code.

Training and Orientation

The program provides ongoing training and education for all mediation participants including mediators, professionals, and families.

Mediators

To provide a pool of qualified mediators in each judicial district, the program offers the 16-hour training to prospective mediators required by the AOC to mediate child abuse and neglect cases. This two day training includes an overview of New Mexico's Children's Court mediation program, an introduction to the legal issues impacting the mediation process, an examination of the process from the perspective of all parties, a review of program policies, "tips and tools" for mediating abuse and neglect cases as well as opportunities to role-play. Additional trainings are developed and delivered to address specific issues or new program developments. For example, in support of the new CYFD permanency initiative of open adoption when children cannot be returned home, a one-day advanced training has been developed for mediating permanency issues including open adoption agreements between birth and prospective adoptive families. The agenda includes an overview of the NM Open Adoption Statute, a review of guidelines, protocol and forms for mediating open adoption agreements developed by the Children's Court mediation program and CYFD, and advanced mediation skills such as reframing and effective agreement writing; understanding and managing difficult dynamics in mediation; and the nature of power in mediation.

Participants

Due to ongoing participation of the professionals in child abuse and neglect mediation, the program has designed “participants’ trainings” for social workers, social work supervisors, CCAs, GALs, Youth Attorneys, CASA, and other who may participate in mediation on a regular basis. These trainings provide an orientation to and overview of the mediation program, an introduction to the mediation process including a discussion of the purpose of mediation, the goal of mediation, clarifying the parties’ roles in mediation, tips for how to be an effective participant in mediation, and discussion about the “language” of mediation. Additional topics may be addressed including cultural awareness or issues specific to a judicial district. There is no cost for this training and both CLE and CLE credits are available. Additional refresher participant trainings for the existing programs may be scheduled as permitted by the overall budget, and determined by the AOC and the statewide coordinator with input from the local coordinator.

Families

The Children’s Court mediation program has developed a more informal approach to educating the families involved with child abuse and neglect cases about the mediation process. In addition to pre-mediation, where the mediator meets with families to describe mediation process and address any questions the families may have, each local program may employ the various educational tools developed, as appropriate. These materials include a video for families about what to expect in mediation, an informational brochure describing the mediation process (available in English and Spanish), and the handout with questions to consider prior to attending mediation. See **APPENDIX I – Informational Materials for Families**.

III. APPENDICES

APPENDIX A	LIST OF LOCAL COORDINATOR DUTIES
APPENDIX B	PLAN DEVELOPMENT FORMS AND SAMPLE PROGRAM PLAN
APPENDIX C	MEDIATION PROCEDURAL DOCUMENTS
APPENDIX D	MEDIATION RELATED FORMS
APPENDIX E	2005 ANNUAL REPORT AND EVALUATION (WITHOUT APPENDICE
APPENDIX F	MEDIATION OUTCOME REPORTING FORMS
APPENDIX G	MEDIATOR ASSESSMENT INSTRUMENTS
APPENDIX H	MODEL STANDARDS OF CONDUCT FOR MEDIATORS
APPENDIX I	INFORMATIONAL MATERIALS FOR FAMILIES

APPENDIX A LIST OF LOCAL COORDINATOR DUTIES

Children's Court Mediation Program Local Coordinator Responsibilities

Program Coordination

- Coordinate all mediation referrals in pre-legal and legal referral cases, including open adoptions prior to Termination of Parental Rights. Tasks include scheduling, mediator notification, and intake sheet preparation and distribution.
- Manage all issues related to mediation from mediators and participants.
- Supervise and monitor mediators, collect evaluation data, case records, and invoices, as required.
- Facilitate quarterly mediator meetings.
- Observe and complete annual assessments of mediators.

Implementation Team Coordination

- Complete mandatory annual review of the plan and modify plan, if needed.
- Facilitate regularly scheduled Implementation Team meetings with direction from the statewide program coordinator.
- Clarify and refine the case referral process and the process for assigning mediators and other related issues, as needed.
- Respond to issues, as needed.

Coordination with Statewide Coordinator and AOC

- Communicate and coordinate with the Statewide Coordinator, including attending all scheduled meetings.
- Provide quarterly reports to the Statewide Coordinator.
- Assist with program evaluation and monitoring of local budget, as required.

Coordination with Professional Participants

- Meet with professional participants (CYFD workers, Attorneys, etc.) to address concerns, and provide information regarding the use, benefits, and expansion of mediation, with direction from the statewide coordinator.
- Work with professionals to identify and implement additional methods of engaging families in the mediation process.
- Respond to any program concerns, as needed.

APPENDIX B PLAN DEVELOPMENT AND SAMPLE PROGRAM PLAN

QUESTIONS TO CONSIDER WHEN DEVELOPING A PLAN

SAMPLE PROGRAM PLAN

CHILDREN'S COURT MEDIATION PROGRAM

QUESTIONS TO CONSIDER WHEN DEVELOPING A PLAN

- **What types of cases?** Pre-legal? Legal?
- **How will the referrals be made?** All cases automatically order to mediation? At the recommendation of the parties?
- **At what point can mediations occur?** All stages? Only in place of scheduled pre-hearing meetings (e.g., pre-adjudicatory or pre-permanency)?
- **How will mediations be set?** By court order? Referral?
- **Who is responsible for filing and/or notification?** CCA? Court? Coordinator?
- **Where will the mediations take place?** Courthouse? CYFD offices? Other?
- **Who may attend mediations?** Respondents only? Attorneys (CCA, GAL, Youth Attorney)? Social Workers/Supervisors? CASA? Others?
- **What additional qualifications are necessary for mediators?** (40 hr certification plus 16 hr A&N training is required per AOC.) More experience?
- **Who is the pool of mediators?** Local pool? Use mediators from other judicial districts?
- **Agreement format?** Use existing form? Create new one?
- **Other specifics?**

MEDIATION IN ABUSE AND NEGLECT CASES CHILDREN'S COURT MEDIATION PROGRAM PLAN < > JUDICIAL DISTRICT

The Project Implementation Team for the < > Judicial District met in < > on < >. A list of the Team members is attached to this plan. This plan covers the period commencing < >.

A. Mediation Plan

Abuse and neglect cases will be assigned to mediation as follows:

Pre-legal Cases

The Department may request mediation at any time by contacting the Local Mediation Coordinator, and the Scheduling Process described below will be followed.

Legal Cases

Mediation may occur at any time during a legal case by either an informal referral process, or through a formal referral process by court order.

At any time after filing any interested party, as defined by the Abuse and Neglect statute, may request mediation. If all parties agree to mediation, the Children's Court Attorney will prepare and file a stipulated "Order for Mediation." The Court may also issue an "Order for Mediation" at any stage during a legal case. A sample Order is attached to this plan. The Order will include a provision requiring that all parties attend the mediation, a confidentiality provision, the location of the mediation, and the date and time of the mediation. Mediation will be scheduled in the place of any scheduled pre-hearing meetings.

❖ Scheduling Process

- *Pre-legal cases.* All requests for mediation in pre-legal cases will be made directly to the Local Program Coordinator who will assign mediators from a list approved by the Implementation Team. A list of mediators is attached to this plan.
- *Legal cases.* The Children's Court Attorney will contact the Local Program Coordinator with any requests for mediation in legal cases by either an informal referral or by court order, who will then assign mediators from the approved list.
- Mediators will be considered in alphabetical order and appointed at the discretion of the Local Program Coordinator.
- Mediations will take place at < > in < >.

- When a judge signs the “Order for Mediation,” the Children’s Court Attorney will mail copies to the parties entitled to notice to include: the Respondents’ attorneys, Guardian Ad Litem, social worker, Children’s Court Attorney, CASA, Citizen’s Review Board, and the Local Program Coordinator.
- Mediation participants may include the Respondents, Respondents’ attorneys, Guardian Ad Litem, social worker, social work supervisor, Children’s Court Attorney, CASA, Treatment providers, extended family members, and any others as agreed upon by the parties.

❖ **Agreements**

- *Pre-legal cases.* If an agreement is reached during mediation in a pre-legal case, the mediator will be responsible for facilitating the written agreement, signed by all parties. A sample agreement is attached to this plan.
- *Legal cases.* If an agreement is reached during mediation, the mediator will be responsible for facilitating the written agreement, signed by all parties, and will locate a Judge or Officer of the Court to ensure that the agreement is entered into the court record for subsequent review and approval.

B. **Mediator Qualifications**

Mediators will be selected from a list maintained by the Local Program Coordinator. All mediators must have:

- Mediators must have a minimum of 40 hours basic mediation training, plus an additional 16 hours of training in mediating abuse and neglect cases including information regarding the New Mexico Children’s Code and Department policies and procedures.
- Mediators will contract with the Administrative Office of the Courts and be paid a minimum of \$50.00 per hour, inclusive of taxes. Mediators are subject to periodic review and evaluation.

C. **Evaluation Plan**

Data collection will have three primary components: Family/Case Records, Mediation Process Records, and assessment of outcomes. These forms are standardized for use in statewide mediation projects.

❖ **Family/Case Records (see Case Record to be filled in by the mediator)**

Descriptive information will be collected about all families who participate in the mediation program. These records will include:

- demographic information: ethnicity, family composition (*e.g.*, two parents, parent and step-parent, single parent, guardian/custodian, etc.), number and ages of children;

- case-related information (reason for state intervention, PSD-assigned risk level, history of previous involvement with PSD);
- special characteristics or circumstances of the family, which may affect the case (e.g., serious mental disability, substance abuse, custody dispute etc.).

❖ **Mediation Process Records (see Case Record to be filled out by the mediator)**

Descriptive information will be collected about the mediation process for each family participating in the program. These records will include:

- who mediated each session,
- who attended each session,
- location of the mediation,
- length of each session, and
- issues discussed and areas of consensus reached.

❖ **Assessment of Outcomes**

Specific outcomes were identified by the grant:

- increased compliance (parents/CYFD) with treatment plans (e.g., referrals made, appointments kept, evidence of treatment success, visits between parent and child/SW and parents/SW and child);
- reduced case disposition time (e.g., decreased overall time from custody to dismissal, shorter time between various court hearings and related events);
- reduced time social workers must spend revising treatment plans (e.g., fewer or shorter staffings, fewer plan changes);
- reduced court time and conservation of judicial resources (e.g., less time spent in preparation, less time spent in hearings);
- increased options for placement, permanency, and services;
- improved understanding of the legal process on the part of respondents; and
- increased satisfaction with the process on the part of the respondents.

The assessment of these outcomes will involve several approaches:

- court case file review;
- interviews and focus groups with participants, including Judges, mediators, social workers, attorneys, and family members; and
- participant feedback collected through short survey forms.

Assessment of Program Outcomes

OUTCOME/INDICATORS	Court FACTS	CYFD FACTS	Court Case File Review	Interviews & Focus Groups	Partic. Feedback
increase (parental/CYFD) progress in terms of treatment plans (kept appointments, treatment success, visitation, etc.)		X	X	X	
reduce case disposition time (time from custody to dismissal; time between various court and related events)	X	X		X	
reduce time social workers must spend revising treatment plans (fewer or shorter staffings, fewer plan changes)		X		X	
conserve judicial resources; reduce court time (time spent in preparation, time spent in hearings)	X			X	
improve respondents' understanding of legal process; increase respondent satisfaction with the process				X	X
increase options for placement, permanency, and services		X	X	X	

D. Monitoring Plan

The Implementation Team will meet periodically to address any issues that may arise.

E. Training and Orientation Plan

A training and orientation to the program will take place on < > in < >. The training provide an orientation to and overview of the mediation program, an introduction to the mediation process including a discussion of the purpose of mediation, the goal of mediation, clarifying the parties' roles in mediation, a review of forms and procedures specific program, and tips on how to be an effective participant in mediation. The training will be available at no cost to social workers, attorneys, CYFD and Court employees, and interested others in the < > Judicial District. CLE credits will be available and attorneys who wish to file for MCLE credit may be charged a small fee to cover the filing costs.

The required two-day training for mediators will occur on < > at < > in < >.

APPENDIX C MEDIATION PROCEDURAL DOCUMENTS

PROCEDURAL OVERVIEW AND FLOWCHART

MEDIATOR CHECKLISTS

DRAFT MEDIATOR POLICIES AND PROCEDURES

CHILDREN'S COURT MEDIATION PROGRAM PROCEDURAL OVERVIEW

The Children's Court mediation program is a resource for families, CYFD staff and the Courts that provides a non-adversarial approach to helping CYFD and the Courts work together with families facing long-term issues such as substance abuse, domestic violence and mental illness to reach permanency solutions for their children. The program provides mediation services to assist the Adoption and Safe Families Act (ASFA) goals of permanency, child safety and child well being.

Referral - Referrals for mediation are made to Local Program Coordinators from any party including CYFD staff, Respondent Attorneys, GALs, Youth Attorneys and the Court.

Notification - Mediators receive a *Case Referral Intake Form* that includes the date and time of the mediation, the names of the parties expected to attend the mediation, and the stage in the proceeding at which the mediation is occurring (e.g. pre-custody, pre-adjudicatory, pre-permanency, termination, etc).

Case Development - Mediators review the *Intake Form* and then contact all the parties to confirm logistics (e.g., day, time and location); identify issues, (e.g., plea, treatment plan, placement, visitation, termination); gather information that could effect the mediation process, (e.g., time constraints, teleconferencing, security concerns, or cognitive levels); and answer any questions the parties may have about mediation. Mediators are responsible for checking with CYFD or the Court about any necessary logistical arrangements.

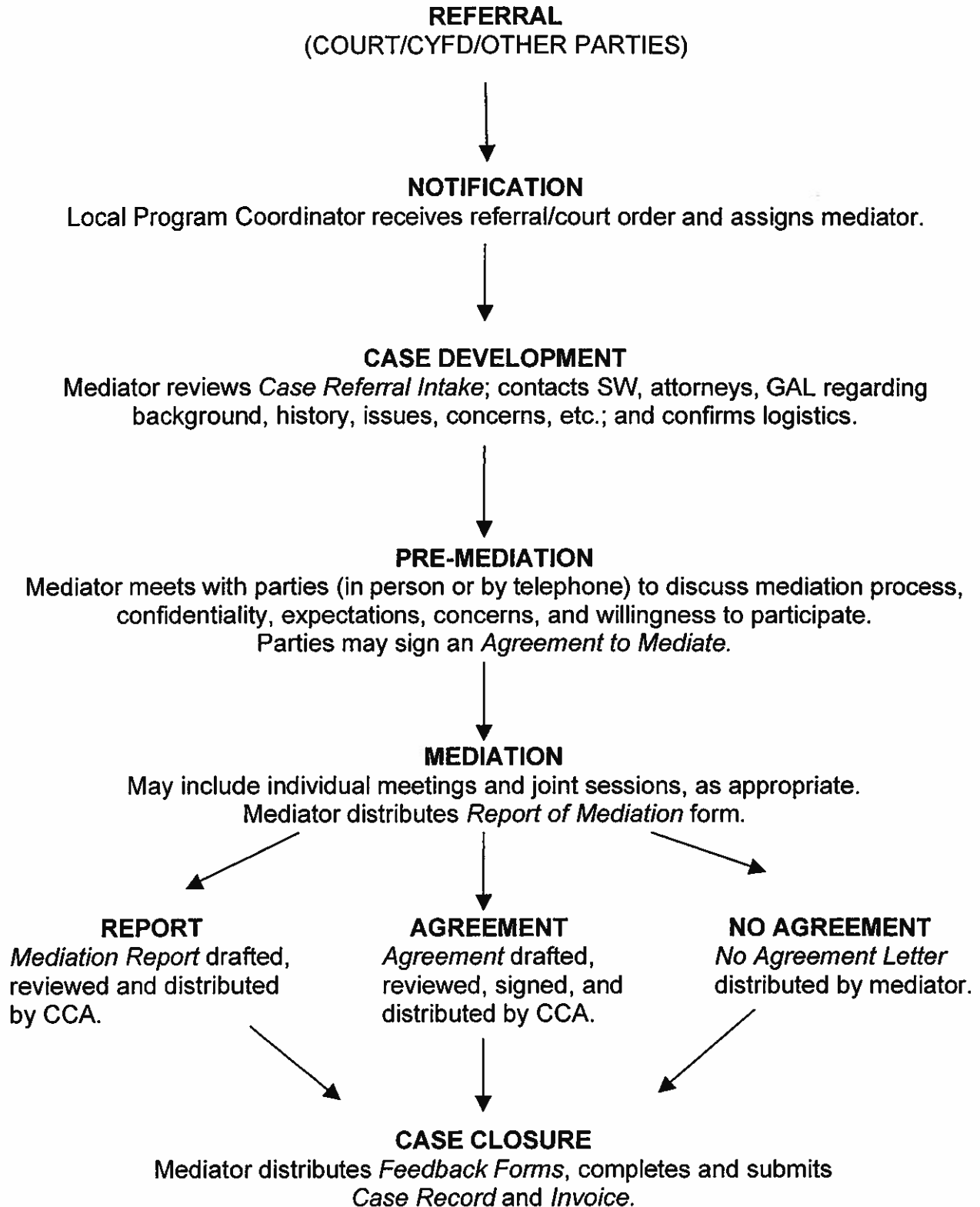
Pre-mediation - Mediators meet with or contact by telephone the parties prior to the mediation to discuss the mediation process, confidentiality, expectations, and willingness to participate. An *Agreement to Mediate* may be signed, if appropriate.

Mediation - The mediation may include individual meetings and joint sessions, as appropriate. Mediators are responsible for bringing the *Report of Mediation Form* to the mediation and ensuring that is filed out completely before giving to the CYFD Attorney for filing with the Court.

Reports/Agreements - Mediators will provide, upon request, a *Mediation Report*, or *Mediation Agreement*, to the CYFD Attorney for dissemination. The parties are responsible for submitting the *Mediation Agreement* or *Order* to the judge for approval. If the parties are unable to reach agreement, a *No Agreement Letter* may be distributed to all parties by the mediator.

Closing a Case - Mediators are responsible for distributing the *Feedback Forms* to the parents and children (if in attendance) at the conclusion of the mediation. Completed forms must be sent to the local program coordinator. A *Case Record* must be completed for each mediation. Mediators must use the standard *Invoice* format. *Invoices*, *Case Records* and *Feedback Forms* must be sent to the local program coordinator within 15 days of the completion of a case.

CHILDREN'S COURT MEDIATION CASE FLOWCHART



CHILDREN'S COURT MEDIATION PROGRAM

Case Development and Pre-Mediation Checklist

The purpose of these guidelines is to assist the mediator with confirming logistics (e.g., day, time and location); identifying issues, (e.g., plea, treatment plan, placement, visitation, termination); and any additional informational that could effect the mediation process, (e.g., time constraints, security concerns, or cognitive levels). This information may be gathered by telephone or in person.

- ☐ **Review intake form and contact all parties involved in mediation.**
- ☐ **Confirm time and place and appropriate scheduling allowances.**
- ☐ **Explain the mediation process to any first time participants.**
- ☐ **Request to have respondents arrive early for pre-mediation conference**
(Plan for at least 30-40 minutes.)
- ☐ **Request permission to speak to respondents in pre-mediation conference if the attorney will not be present.** (Stress pre-mediation time is for describing "the process", not to discuss the facts of the case.)
- ☐ **Identify issues for discussion during mediation.**
- ☐ **Insure the room location is available and appropriately set up.**
- ☐ **Alert security if the case warrants such notification - let security know where the mediation will take place.**
- ☐ **Contact all professionals as close to mediation as possible for any updates relative to the mediation process.**
- ☐ **Introduce yourself or acknowledge each participant as they arrive.**
- ☐ **Sign an Agreement to Mediate, if appropriate.**
- ☐ **Smile often.**
- ☐ **Keep your sense of humor.**

CHILDREN'S COURT MEDIATION PROGRAM

Mediation Checklist

OPENING THE PROCESS

Setting the Tone:

- Make sure that you can see everyone and everyone can see you.
- Introductions.
- Mediator introduction should include the following:
 - Purpose of mediation
 - Role of the mediator
 - Confidentiality
 - Caucus/Breaks
 - Time
 - Guidelines (Keep it simple. Let parties develop their own guidelines.)

Setting the Agenda:

- Let parties set the agenda.
- Clarify what all parties expect out of the process.
- Identify desired outcomes.

DURING THE PROCESS

- Remain calm.
- Respect parties and their issues.
- Avoid giving own views and/or advice.
- Use mediation tools appropriately.
- Keep discussion focused on key issues not personalities.
- Clarify areas of agreement and disagreement.
- Help participants summarize progress and recognize accomplishments.
- Keep track of important information.
- Make sure discussion is clear and understood by all.
- Assist parties in the writing of an agreement, if appropriate.

ENDING THE PROCESS

- Review progress/areas of agreement or any written agreement.
- Identify unresolved issues.
- Identify and clarify next steps.
- Thank everyone for participating.

CHILDREN'S COURT MEDIATION PROGRAM

MEDIATOR POLICIES AND PROCEDURES

~ DRAFT ~

Agreement Reached

The mediator will assist parties in drafting an agreement for review by all parties including Respondent Attorneys, Guardian ad Litem (GAL), Youth Attorney, Children Youth and Families Department (CYFD) staff, etc. The CYFD attorney (CCA) will be responsible for distributing an agreement for final review, signatures, and filing with the Court. A follow-up meeting may be scheduled to finalize and sign the agreement.

Allegations of Child Abuse and/or Neglect

Any incidents or new allegations of child abuse and/or neglect that arise during the mediation process should be reported by the Mediator to the local coordinator immediately. The local coordinator will make contact with the CYFD to take appropriate action.

Canceling a Scheduled Court Ordered Mediation

The mediator may not cancel a court ordered mediation. Only parties named in the order for mediation may request that a scheduled mediation be cancelled or continued.

Case Record

A Case Record must be completed for each mediation referral, even if the mediation is cancelled. A Case Record must accompany each invoice submitted to the local program coordinator, within 15 days of the completion of a case.

Children Attending Mediation

Any child 14 years or older must be included in a mediation, unless the Court has determined that their inclusion is inappropriate. The mediator will contact the Youth Attorney to confirm if, and how, any child 14 years and older will participate in the mediation. The mediator will consult with the GAL about the participation of any child under the age of 14.

Closing Cases

A case may be closed following the completion of a mediation or with the approval of the local program coordinator. Mediators are responsible for distributing the *Feedback Forms* to the parents and children (if in attendance) at the conclusion of the mediation. Completed forms must be sent to the local program coordinator. A *Case Record* must be completed for each mediation. Mediators must use the standard *Invoice* format. *Invoices, Case Records and Feedback Forms* must be sent to the local program coordinator within 15 days of the completion of a case.

CHILDREN'S COURT MEDIATION PROGRAM

Confidentiality of Cases

Mediators may *only* discuss the content, progress or information received during mediation with the program coordinator. Mediators may not discuss the contents of a particular mediation with any party to the mediation (primary OR collateral) without the expressed permission from mediation participants.

Contact with Children

Mediators may meet with a child alone only with permission of CYFD and the GAL or Youth Attorney.

Contacting the Social Worker

Once assigned a case the mediator will contact the SW immediately. Mediators may refer to the case management and pre-mediation checklist, and screening questions for permanency/open adoption cases.

Sample questions:

- *Are there any safety issues I need to be aware of when meeting with the parties?*
- *Other issues? E.g., Concerns about developmental delays, substance abuse, and current working relationships between parties?*
- *Any specific safety issues regarding the child?*
- *Should any of the information on the referral be considered confidential?*
- *Is there anything else that I need to know about this referral?*
- *Do you have any questions regarding mediation?*

Contacting the Parties

Mediators shall contact all parties involved with the referral within three (3) business days after the assignment of the referral. The Mediator will inform the local coordinator if that is not possible. Mediators may refer to the case management and pre-mediation checklist for guidance.

Forms

All relevant forms used by the Children's Court mediation program are included in the "Mediator Packet" that accompanies each mediator contract at the beginning of the new fiscal year (i.e., the first of July). Mediators are responsible for supplying copies of the forms needed for mediation. Any additional supplies or materials are the responsibility of the Mediator.

Insurance

The program requires that mediators carry independent mediator liability coverage that includes family mediation coverage.

Invoicing

Mediators may bill a maximum of 5 hours for pre-legal and legal cases and 12 hours for cases involving permanency and/or open adoption issues. Additional hours must be approved ahead of time by the local program coordinator. That includes pre-mediation,

CHILDREN'S COURT MEDIATION PROGRAM

mediation and post-mediation services, including any supervision time, administrative tasks, drafting of agreements, phone calls, and travel time. Mediator must use the invoice template distributed with their contract.

Mediation Report

Mediators will provide, upon request, a *Mediation Report* to the CYFD Attorney for dissemination to all parties. The *Mediation Report* captures the issues discussed during the mediation and areas of agreement and non-agreement. This document is not signed by the parties.

Neutrality

Mediators shall maintain their neutral role at all times with all parties and collaterals to mediation. If a Mediator cannot be neutral due to a strong bias or past personal history he/she should refuse or withdraw from the mediation. If a Mediator has a past history that would impact their ability to be impartial on certain types of cases, (for example, domestic violence) please contact the local program coordinator.

No Agreement Reached

If parties and the Mediator agree that a case should be closed due to lack of agreement, the Mediator may submit a "No Agreement" letter to all parties.

Payment

The Administrative Office of the Courts generally pays all invoices within 30-days of their receipt. Mediators should contact their local coordinator if payment has not been received within 45 days.

Report of Mediation

Mediators are responsible for bringing the *Report of Mediation Form* to the mediation and ensuring that is filed out completely before giving to the CYFD Attorney for filing with the Court.

Photograph of Child

Mediators may suggest that a picture of the child be available at mediation sessions. The picture should not include any additional family members. The picture will remind all participants who is the focus of the mediation. A Mediator may request a picture from the SW during their initial phone call or from any of the other participants involved in the mediation.

Possible Outcomes

There are three (3) possible outcomes in Children Court mediation: 1) parties reach agreement and a Mediation Agreement is drafted; 2) parties request a Mediation Report that captures the areas of agreement and disagreement; and 3) parties cannot reach agreement and request a No Agreement Letter. Any case may be referred back to mediation at a later date.

CHILDREN'S COURT MEDIATION PROGRAM

Reportable Actions

Any incidents or allegations of child abuse and/or neglect or any threats of bodily harm that arise during the mediation process should be reported to the program supervisor/coordinator immediately, who will then take appropriate action.

Supervision

The local program coordinator provides supervision and consultation for mediators once a case has been assigned. It is the responsibility of the mediator to contact the local coordinator with any issues as they arise, including questions and concerns about the case, their performance and policies and procedures. Additional support and professional development for mediators includes ongoing training, regularly scheduled meetings and opportunities to debrief cases.

Terminating the Mediation Process Prior to a Scheduled Session

A mediator may terminate the mediation process prior to a scheduled mediation only upon approval from the local program coordinator.

Terminating the Mediation Process During the Session

A mediator may terminate the mediation if all parties agree or if any issues of safety, mental health or substance abuse are of concern during the mediation session. The mediator will notify the local coordinator if a mediation is ended due to any of these concerns.

Threats of Violence

If any threat of violence to an identified individual occurs during the mediation process, the Mediator will immediately report the threat to the local program coordinator. The local program coordinator, in conjunction with the Mediator, will take the appropriate action.

Time Frames

Mediations should be initiated and concluded within sixty (60) days of the referral unless all parties agree to an extension of that time.

APPENDIX D MEDIATION RELATED FORMS

CASE REFERRAL INTAKE SHEET

SCREENING QUESTIONS FOR PERMANENCY/OPEN ADOPTION

SAMPLE ORDERS FOR MEDIATION

REPORT OF MEDIATION FORM

AGREEMENT TO MEDIATE

SAMPLE MEDIATION AGREEMENT

OPEN ADOPTION AGREEMENT GUIDELINES

MEDIATION REPORT

NO AGREEMENT LETTER

**CHILDREN'S COURT MEDIATION PROGRAM
CASE REFERRAL INTAKE**

Date:	County:
Children involved in the referral:	
DOB:	
REFERRAL INFORMATION	
Referral Source: <input type="checkbox"/> Court Ordered <input type="checkbox"/> CYFD <input type="checkbox"/> Other _____	
Contact information:	
CYFD FACTS #	Court case #
Legal Status:	
<input type="checkbox"/> Investigation <input type="checkbox"/> Pre-adjudicatory <input type="checkbox"/> Investigation <input type="checkbox"/> Pre-permanency	
<input type="checkbox"/> Open Adoption <input type="checkbox"/> Termination <input type="checkbox"/> Other _____	
Additional case information: (I.e., TPR petition filed, Trial date set, Change of plan, etc.)	
PARTIES INVOLVED IN THE REFERRAL	
Birth Mother:	
Birth Mother's Attorney:	
Birth Father:	
Birth Father's Attorney:	
Permanency Planning Worker/Supervisor:	
Children's Court Attorney (CCA):	
Child(ren)s' Attorney (GAL):	
Adoption Worker:	
Prospective Adoptive Parents:	
Prospective Adoptive Parent' Attorney:	
CASA (if assigned):	
Other Interested Parties:	
Assigned Mediator:	
Date, Time & Location of Mediation:	

CHILDREN'S COURT MEDIATION PROGRAM

PERMANENCY/OPEN ADOPTION SCREENING QUESTIONS FOR LOCAL COORDINATORS AND MEDIATORS

- Has a change of plan been entered into the court record?
- Has TPR process been initiated?
- Is the birth family considering relinquishment?
- Has the birth family agreed to explore the open adoption option?
- Has a prospective adoptive family been identified and approved?
- Has an adoptive placement agreement been signed by the birth family? If not, why?
- Has the CCA filed a stipulated order for mediation?

ADDITIONAL QUESTIONS FOR MEDIATORS

- When might an open adoption agreement go into effect?
- Should the child (ren) be involved in the mediation? If so, how might that happen?
- Are there any safety issues I need to be aware of when meeting with the parties?
- Other issues? E.g., Concerns about developmental delays, substance abuse, and current working relationships between parties?
- Are there any specific safety issues regarding the child?
- Should any of the information on the referral be considered confidential?
- Is there anything else that I need to know about this referral?
- Do you have any questions regarding the mediation process?

◇ Judicial District Court
County of ◇
State of New Mexico

No. * (JQ)

STATE OF NEW MEXICO, ex rel.,
CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
In the Matter of *.

STIPULATED ORDER FOR MEDIATION

THIS MATTER having come before this Court upon a stipulated request for mediation to explore the possibility of open adoption the Court herewith orders mediation to occur as follows:

- 1. Mediation.** Mediation shall be scheduled at the earliest possible date, but in no event later than sixty (60) days from entry of this Order. The assigned Mediator is _____.
 - A. The mediator will contact the parties and parties' attorneys to discuss the mediation process, identify specific concerns, and to determine who should attend mediation.
 - B. Mediation proceedings shall be held in private and shall be confidential, with one exception. Any new information, i.e. information that is not already known by the appropriate authorities, regarding injury or neglect to a child or an adult shall be reported to the Department.
 - C. All communications, verbal or written, between the parties and the mediator, or made pursuant to this Order, shall be inadmissible in any Court hearing.
 - D. If the mediation is successful, the agreement shall be reduced to writing and signed by the parties. The Children's Court Attorney will be responsible for the distribution of the signed agreement. The content of the mediation shall not be reported to the Court.
- 2. Notice.** The Department shall provide copies of this Order to all parties of record.

District Court Judge

***Judicial District Court
County of *
State of New Mexico**

No. * (JQ)

**STATE OF NEW MEXICO, ex rel.,
CHILDREN, YOUTH AND FAMILIES DEPARTMENT,
In the Matter of *.**

ORDER FOR MEDIATION

The Court herewith orders mediation to occur as follows:

1. **Hearings.** The <Custody Hearing> required by SCRA 1986, 10-303, was held on <DATE>.
2. **Mediation.** Mediation shall occur at <the Mandatory Pre-Adjudicatory Meeting> which shall be held at <LOCATION> on <DATE>, at <TIME> for up to two hours.
 - A. All parties are required to attend mediation.
 - B. Mediation proceedings shall be held in private and shall be confidential, with one exception. Any new information, i.e. information that is not already known by the appropriate authorities, regarding injury or neglect to a child or an adult shall be reported to the Department.
 - C. All communications, verbal or written, between the parties and the mediator, or made pursuant to this Order, shall be inadmissible in any Court hearing.
 - D. If the mediation is successful, the agreement shall be reduced to writing and signed by the parties. The content of the mediation shall not be reported to the Court.
 - E. Mediators may contact the parties and the parties' attorneys to schedule pre-mediation to discuss the mediation process and identify specific concerns prior to the scheduled mediation. Attorneys will facilitate their clients' participation in pre-mediation, and will cooperate with the mediator to schedule the pre-mediation session. Attorneys may elect not to participate in the pre-mediation session with their clients.
3. **Notice.** The Department shall provide copies of this Order to all parties of record.

() District Court Judge
() Special Master

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

In the Matter of _____,
State of New Mexico Children, Youth and Families
Department, petitioner.

v.

No. _____

_____, respondent.

REPORT OF MEDIATION

We the undersigned, participated in a mediation session today, _____ (date).

We acknowledge that the purpose of this meeting is to candidly discuss and attempt to resolve outstanding issues in this case. Pursuant to Rule 11-408 NMRA of the Rules of Evidence, any opinions, admissions and comments made during this proceeding are confidential. Except as otherwise provided by the Rules of Evidence of Children's Code, these opinions, admissions and comments are not subject to discovery, and cannot be used as an admission or for any other purpose by any party in any proceeding governing this action. New information of abuse or neglect is subject to being reported pursuant to the Children's Code.

Signatures:

Mediator

Children's Court Attorney

Respondent

Respondent's Attorney

Social Work Supervisor

Social Worker

Guardian ad litem

CASA

Other

Other

(To be completed by mediator. Choose one.)

- ___ parties reached complete agreement
- ___ parties reached a partial agreement
- ___ no agreement was reached
- ___ continued
- ___ reset
- ___ vacated

Children's court attorney shall file report with the court and provide a copies to all parties.

Form 6559 NTC: Report of Mediation. For use in neglect and abuse proceedings.

CHILDREN'S COURT MEDIATION PROGRAM

AGREEMENT TO MEDIATE

Definition of Mediation. Mediation is a voluntary process of resolving disputes. The participants to a mediation work together with a professionally trained experienced mediator to solve the problem in a manner that suits the needs of the conflict.

Role of the Mediator. The mediator is a neutral, unbiased and impartial. The role of the mediator is to help the parties develop a satisfactory and realistic resolution to their dispute through communication and problem solving. The mediator cannot act as an attorney, counselor, or judge. The mediator does not provide legal advice or counseling services. Parties are encouraged to consult with professionals during the mediation process.

Role of the Parties. The parties retain the responsibility for decision-making. The parties will not be forced to agree to anything they're not comfortable with. The mediation works best when the participants take an active role in the process.

Other Parties. Typically mediation is most effective when only the parties involved in the dispute are present during the mediation. All other parties may attend only if their roles are clarified in advance and with the agreement of both parties.

Confidentiality. Mediation is a private process. The mediator will not reveal the details of the mediation except (as required by law) to report new allegations of child abuse or threats of physical harm. The parties agree that the mediators will *not* be called to testify should future judicial proceedings occur in this case. This confidentiality is provided so that all participants feel free to explore issues and potential solutions. The mediator will verify with participants what information may be shared and with whom the information may be shared.

Agreement. The mediator will provide authorized persons with copies of a draft agreement, prior to signing. Once a final agreement is reached, the mediator will provide copies of the agreement and any other necessary paperwork to the participants who signed the agreement and other authorized parties. If there is no agreement reached during mediation, the only information disclosed is that process is concluded without an agreement. The mediator will not make any recommendation or render any opinions on the case.

WE AGREE TO THE STATEMENTS LISTED ABOVE:

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Mediator Signature

Date

CHILDREN'S COURT MEDIATION PROGRAM

MEDIATION AGREEMENT

Case Name:

Case Number:

The parties met for mediation on _____. The parties agree to the following terms:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Initials: _____

Page ____ of ____

CHILDREN'S COURT MEDIATION PROGRAM

Each party acknowledges by his/her signature below, that they have read and understood this Mediation Agreement and have had adequate representation of legal counsel prior to signing this agreement.

All records, reports or other documents received by the mediator are confidential. The preparation of this agreement is the responsibility of the parties and their attorney. A court order or judgment may be entered giving effect to this agreement.

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Date _____

Mediator

GUIDELINES FOR OPEN ADOPTION AGREEMENTS

Incorporate neutral, balanced, positive, future oriented language of the birth and adoptive families into a confidential draft for review by all parties involved with the case, including the CYFD Attorney (CCA), Respondent Attorneys, Adoptive Parents Attorney, GALs, and Youth Attorney.

An agreement may begin with a paragraph or two with language describing the parties' intentions about the future of the child. For example:

This Agreement is about the relationship <<CHILD> FULL NAME>>will have with his/her/their birth and adoptive families. This agreement is between <NAME, RELATIONSHIP TO <CHILD>> and <NAME, RELATIONSHIP TO <CHILD>>. This Agreement is intended to preserve existing family relationships, cause the least amount of disruption to <<CHILD>> and provide him/her/them with the permanence and security of adoption. We agree to support legal permanence for <CHILD> through adoption by adoptive parent(s). We understand once the adoption is granted, Adoptive parent(s) will have all the legal parental rights and responsibilities for <<CHILD>>.

We are committed to a relationship that is supportive of <<CHILD>'S> needs, now and in the future, and understand that these needs may change as <<CHILD>> matures. We understand and agree that one agreement cannot cover all the issues that may arise in a <<CHILD>'S> life. We agree to maintain flexibility when <<CHILD>> gets older and has different needs and interests. On behalf of <<CHILD>> we agree to the following:

The body of the agreement should include, at a minimum, the following areas:

CONTACT

This section should include details about contact between the child and birth family regarding:

- **IN PERSON** (Length of contact and frequency, location, transportation to/from, etc.)
- **TELEPHONE** (Length of contact and frequency, location, transportation to/from, etc.)
- **MAIL** (Letters, cards, etc.)
- **GIFTS** (Birthdays, holidays, etc.)
- **OTHER** (E-mail, Photos, etc.)
- **FUTURE CONTACT**

MODIFICATIONS

This section should include details about how and when modifications concerning contact will be addressed. Parties may consider the following questions:

- What happens if the agreed upon contact needs to be changed or modified? How will they do that? In writing? Return to mediation?
- What will the parties do if agreed upon contact is no longer in the best interest of the child? Stop contact? Modify the agreement? Return to mediation?
- What type of behavior could be considered not in the child's best interest?

Court Case #: _____

Family Name: _____

Date: _____

PLEA

TREATMENT PLAN

Assessment for parents:	Notes	Assessment for child(ren):	Notes
<input type="checkbox"/> Psych		<input type="checkbox"/> Psych	
<input type="checkbox"/> Medical		<input type="checkbox"/> Medical	
<input type="checkbox"/> Dental		<input type="checkbox"/> Dental	
<input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Domestic Violence	
<input type="checkbox"/> Substance Abuse		<input type="checkbox"/> Substance Abuse	
<input type="checkbox"/> Other		<input type="checkbox"/> Other	
Services for parents:	Notes	Services for child(ren):	Notes
<input type="checkbox"/> Counseling		<input type="checkbox"/> Counseling	
<input type="checkbox"/> Transportation		<input type="checkbox"/> Transportation	
<input type="checkbox"/> Job Assistance		<input type="checkbox"/> Job Assistance	
<input type="checkbox"/> Parenting		<input type="checkbox"/> Parenting	
<input type="checkbox"/> Domestic Violence		<input type="checkbox"/> Domestic Violence	
<input type="checkbox"/> Substance Abuse TX		<input type="checkbox"/> Substance Abuse TX	
<input type="checkbox"/> Other		<input type="checkbox"/> Other	

Visitation: ☐ Unsupervised ☐ Supervised

With _____ Frequency _____ Location _____

Placement:

Other:

CHILDREN'S COURT MEDIATION PROGRAM

NO AGREEMENT LETTER

Date: _____

Family Case Name: _____ Case No.: _____

The parties _____ and _____
have participated in the mediation process.

The last mediation session was held on _____.

We appreciate their participation; unfortunately, they were unable to complete a mutually agreed upon agreement through the mediation process.

The parties have been informed that they can request a return to mediation at any time.

MEDIATOR

APPENDIX E 2005 ANNUAL REPORT AND EVALUATION
WITHOUT APPENDICES

INTRODUCTION

Since March 2000, the Administrative Office of the Courts (AOC) has worked with the New Mexico Children Youth and Families Department (CYFD) to develop the use of mediation in abuse and neglect cases. During the past five years, the project has grown to include fourteen counties (Bernalillo, Catron, Chaves, Cibola, Grant, Hidalgo, Lea, Luna, San Juan, Sandoval, Sierra, Socorro, Torrance, and Valencia) in six judicial districts (2nd, 5th, 6th, 7th, 11th, and 13th). Cases are mediated at all stages of pre-legal and legal cases from investigation to termination. A mediator meets with the parents, their attorneys, the guardian ad litem, the CYFD attorney, the social worker and other interested parties and assist the parties in achieving agreements regarding placement, visitation, treatment and permanency. Approximately 1,311 cases have been mediated over the last five years. Statewide referrals have steadily increased each year, from 115 in the first full year of operation (2000-2001) to 399 cases that were mediated during this grant period. That is a 6% increase in referrals during the last grant period.

Program quality has also consistently improved over the past five years and evaluation results have continued to be positive. Ongoing evaluation results indicate that mediation conserves both judicial and CYFD resources by reducing the amount of time parties spend in post-mediation court hearings, improves the quality of the treatment plans, and results in increased compliance with treatment plans. Families report that they feel heard and respected. Social workers tell us that mediation increase the number of options available to the parties and they believe that families who attend mediation are more likely to comply with their treatment plans. Finally, judges and attorneys continue to report that the legal process has become less adversarial and less litigious because of mediation.

Although referrals continue to increase, evaluation reports remain positive and interest in the project has grown, our long-range plan to expand the project was curtailed due to budget constraints. We have focused on maintaining the status quo of the project while we explored alternative funding sources. The statewide project received a substantial decrease in CYFD funding (from \$141,000 to \$80,000) for the grant period July 1, 2004 through June 30, 2005. This was a 47% reduction from the \$141,000 in funding for the previous ten-month grant period, September 1, 2003 through June 30, 2004. The local district courts and CYFD offices contributed supplemental funding in the form of cash or in-kind service to ensure the same general level of service to families for FY 2005. In addition, we were unable to adequately provide two components that are critical to the progress and development of the project – ongoing training for mediators and participants and an independent evaluation. The reduction in funding also required more screening of all cases and the close monitoring of per mediation costs.

In an effort to secure permanent funding, we worked with the AOC and other stakeholders in support of the *1% for Children Initiative* during the 2005 legislative session. As a result, the AOC secured general funds of \$46,401 for FY 2006 to cover administrative costs for the program and mediation services in the 5th Judicial District. In addition, CYFD will renew its

grant of \$80,000 from Title IV-B funds for mediation services only, with the understanding that the CYFD grant may not be renewed again in FY 2007.

During 2004-2005 the project continued to provide quality mediation services to families in each of the existing project sites by working with each local Implementation Team; providing ongoing support and feedback for local mediators; and collecting all relevant evaluative data. A description of our activities and accomplishments follows.

PROJECT ACTIVITIES

1. Work with Local Implementation Teams to Provide Quality Mediation Services in Each Project Site.

Although our reduced funding forced the project to eliminate one of the local coordinators (in the Fifth Judicial District), we were fortunate to retain the three part-time local coordinators who have facilitated and managed the day-to-day activities at the local level for the past three years, and also worked with the local court in another site (Seventh Judicial District) to provide an in-house local coordinator. The local coordinators bring a broad range of experience and skills to the project and have been critical to the project's success. Resumes or biographies for each of the coordinators are included in Appendix A.

- **Teresa Berry** coordinates the programs in the Second and Thirteenth Judicial Districts. Teresa brings over twenty-five years of mediation, facilitation, and project development and management experience to the project. Teresa has been instrumental in developing the mediator and participants' training agendas and is also working to develop mediator "quality/practice" standards. She also serves as the statewide coordinator for the mediation project.
- **Terri Reheman** is the local program coordinator for the Eleventh Judicial District. Terri has been mediating since 1991 and also teaches communication skills at San Juan College. Terri has actively promoted the mediation project by meeting regularly with PSD staff as well as with local treatment service providers.
- **Evangeline Zamora**, former PSD county office manager, coordinates the program in the Sixth Judicial District. Evangeline's twenty plus years of social services experience within the community have allowed us to expand the project to include families who are involved with both the juvenile justice and protective services divisions of the CYFD.
- **Jason Jones**, financial specialist with the Seventh Judicial District Court. Jason took over the local coordinator duties in July of 2004. Jason has been with the Seventh District for over nine years.

The local coordinators have worked closely with their local Implementation Teams to provide mediation in both legal and pre-custody cases. Copies of the project plans for each district are included in Appendix B and a brief description of the activities in each pilot site follows.

Second Judicial District

Implementation Team Meetings. Implementation Team meetings were held in the Second Judicial District on September 30, 2004, November 15, 2004, January 24, 2005, April 18, 2005, and May 16, 2004. During the past year, the Implementation Team in the Second Judicial District has addressed a number of topics and undertook a number of tasks. For example, the Team:

- Continued to address case referral issues.
- Continued mediation at all stages of pre-legal and legal cases (e.g. investigations, pre-permanency conferences, emancipation conferencing, and termination).
- Focused on expanding pre-permanency mediation.
- Worked with CYFD to begin exploration of Open Adoption mediation.
- Continued mediations that include youth participants (e.g. independent living plans, placement, visitation etc.).
- Continued implementation of the mediator assessment, observations, and a professional review process for mediators.
- Continued to address a number of “process issues” including the length of mediation, attendance at mediation, conference call and telephonic appearances, and how to better engage professional participants.
- Updated mediator packets to help with orientation to the project.
- Continued to support the Truancy Court mediation program in an advisory role.
- Consulted with CYFD regarding mediation process concerns, as needed.
- Solicited and received feedback from individual judges and hearing officers regarding the project.
- Completed transition of the program under the Court Alternatives Division of the Second Judicial District Court.

- Coordinated program operations and strategic planning with the Court Alternative Director.
- Added a case manager to provide support for the local coordinator and build capacity for program administrative needs.
- Secured supplemental funding from the Second Judicial District to provide contract services for local program coordination for FY 2006.
- Worked with the AOC in support of the 1% for Children funding initiative during the past legislative session.

The mediators in the Second Judicial District have meet on a quarterly basis to talk about the project, training needs and ways to improve the process. The meetings included discussions with other mediation participants (e.g., Respondent Attorneys and CYFD staff) as well as focusing on particular skill areas. The local project coordinator for the Second Judicial District facilitated these meetings. These meetings have continued to be extremely beneficial to the mediators and their continued professional development.

Evaluation Data Collection Activities. The local coordinator gathered and provided evaluation forms to the AOC. The local coordinator also assisted with the dissemination of a new survey for the professional participants, developed by the program, to gain specific feedback from Department attorneys, respondents' attorneys, guardians' ad litem, social workers, and others.

Referrals. Approximately 152 mediations were held in the Second Judicial District. This is a 19% increase over last year. Currently 80% of all legal cases filed with the court are referred to mediation at the custody hearing and the Department has also directly referred approximately 10 cases to mediation (2 pre-legal and 6 post-adjudication or pre-permanency).

Fifth Judicial District

Implementation Team Meetings. Due to reduced funding, the program was unable to provide local program coordination for FY 2005. The statewide coordinator assumed direct supervision of the program. Implementation Team meetings were held in the Fifth Judicial District in Chaves County on September 30, 2004, and in Lea County on September 29, 2004. The statewide coordinator continued to communicate with the Implementation Teams during the past year as they addressed a number of topics and undertook a number of tasks. For example:

- Established referral process to continue mediations without support of a local program coordinator.
- Establish protocol for the mediators to handle more case management responsibilities, including submitting to the court any agreements reached in

mediation and finding another mediator when unable to mediate a case they had been assigned.

- Worked with the AOC in support of the 1% for Children funding initiative during the past legislative session.
- With support of local legislators, secured permanent state funding for the program in the Fifth Judicial District.
- Worked with the statewide coordinator and the AOC to develop a transition plan for FY 2006.

The statewide coordinator met with and provided ongoing support to mediators in both Lea and Chaves Counties to discuss the new referral plans for FY 2005, review forms, share process ideas, and address concerns.

Evaluation Data Collection Activities. The statewide coordinator gathered and provided evaluation forms to the AOC. The statewide coordinator also assisted with the dissemination of a new survey for the professional participants, developed by the program, to gain specific feedback from Department attorneys, respondents' attorneys, guardians' ad litem, social workers, and others.

Referrals. Thirty-six (36) cases were mediated in the Fifth Judicial District during the grant period (30 in Lea County and 6 in Chaves County). This 38.5% increase from the prior years referrals was a mirror of the distribution of cases between the two counties last year (5 in Lea County and 21 in Chaves County).

The Fifth District has experienced an inconsistent level of referrals over the past five years due to changes in Court and Department personnel; specifically, the retirement of the local Children's Court Judge and the resignation of the local PSD county office manager, and the lack of a local coordinator for FY 2005. For example, 26 cases were mediated in the Fifth Judicial District during FY 2004 (5 in Lea County and 21 in Chaves County), a 15% reduction from the prior years referrals. While the final total of 36 cases for FY 2005 was a substantial increase from the prior year, it remains a decrease from the initial projection of 50 cases.

Sixth Judicial District

Implementation Team Meetings. An Implementation Team meeting was held in the Sixth Judicial District on September 9, 2004. Due to budget constraints, the Team's work focused primarily on screening cases and prioritizing referrals to ensure that the program would maintain a high quality of mediation service to families. Throughout the year, the statewide coordinator continued to communicate with the Implementation Team as they addressed a number of topics and undertook a number of tasks. For example:

- Decided to delay the expansion of JJD/PSD mediations.
- Worked with the Court to provide supplemental funding to ensure continual local coordination throughout the year.
- Met with Judges throughout the year to discuss program issues and monitor funding needs.
- Continued to work with CYFD staff regarding case referrals and scheduling.
- Communicated regularly with local mediators to discuss scheduling, programming, and case issues.

Evaluation Data Collection Activities. The local coordinator gathered and provided evaluation forms to AOC and the AOC delivered them to the Department's program evaluator. The local coordinator also assisted with the dissemination of a new survey for the professional participants, developed by the program, to gain specific feedback from Department attorneys, respondents' attorneys, guardians' ad litem, social workers, and others.

Referrals. Approximately 102 mediations were held in the Sixth Judicial District during the grant period. This is approximately the same number of cases mediated as last year.

Seventh Judicial District

Implementation Team Meetings. An Implementation Team meeting was held in the Seventh Judicial District on October 1, 2004. During the past year, the Seventh Judicial District has addressed a number of topics and undertook a number of tasks. For example:

- Continued to order that all legal cases be ordered to mediation unless a party believes it would be inappropriate.
- Addressed the issues of funding the program in the future including the possibility of managing the funds at the local level.
- The local coordinator is in contact with local mediator pool on a weekly basis.
- Developed a list of interested mediators so that the program might expand their pool of qualified local mediators in 2005-06.
- Explored increasing referrals for mediation at other stages of pre-legal and legal cases (e.g. investigations, pre-permanency conferences, emancipation conferencing, and termination).

- Addressed scheduling conflicts for attorneys participating in court ordered mediation.

Evaluation Data Collection Activities. The local coordinator gathered and provided evaluation forms to AOC and the AOC delivered them to the Department's program evaluator. The local coordinator also assisted with the dissemination of a new survey for the professional participants, developed by the program, to gain specific feedback from Department attorneys, respondents' attorneys, guardians' ad litem, social workers, and others. In addition, the local coordinator keeps statistics as to the cases assigned to a particular mediator and dollar amounts.

Referrals. Approximately twenty-one (21) mediations were scheduled in the Seventh Judicial District during the grant period. This is approximately the same number of cases mediated in the previous grant period.

Eleventh Judicial District Implementation Team meetings were held in the Eleventh Judicial District on October 12, 2004, February 15, 2005, and June 7, 2005. During the past year, the Implementation Team has addressed a number of topics including:

- Ongoing project funding.
- The impact of changes in staff – including the judiciary.
- Preparedness of mediation team members.
- Identifying appropriate cases for mediation.
- Court-ordering mediations at custody hearings.
- Paperwork.
- Strengths and weaknesses of the program.
- Training materials.
- Professional behavior, and
- Contract issues.

Evaluation Data Collection Activities. The local coordinator gathered and provided parent/guardian and child evaluation forms to the AOC for each of the mediations conducted in the district. There continues to be strong support for the program in the Eleventh Judicial District. During the meeting, participants discussed alternative uses of mediation as well as how to best get cases referred to mediation.

Referrals. Forty-eight (48) cases were referred to mediation during the grant year. This reflects a 41% increase from the previous year. This was the third year that the project was fully operational and is finally mediating the number of cases originally projected.

Thirteenth Judicial District

Implementation Team Meetings. Implementation Team meetings were held in the Thirteenth Judicial District in Sandoval County on February 23, 2005, in Valencia County on September 27, 2004, and in Cibola County on October 4, 2005. During the past year, the Implementation Teams in the Thirteenth Judicial District have addressed a number of topics and undertook a number of tasks. For example, the Teams:

- Completed expansion of the program to Cibola County, finalized the Implementation Plan to include coordination with Family Court and began mediating cases.
- Held a 16-hour mediator training to help create a local pool of mediators for Cibola County.
- Held a half-day participant training for professionals involved with abuse and neglect cases in Cibola County.
- Began ordering cases to mediation at custody hearings to occur in the place of the pre-adjudication conference in Valencia County.
- Began scheduling a second mediation for cases at pre-permanency, following the pre-adjudication mediation in Sandoval County only.
- Explored mediating CYFD Adult Protective cases (APS) in Sandoval County only, and continued interested in expanding mediation to families involved with both the protective services and the juvenile justice divisions of CYFD.
- Revised plans for Valencia and Sandoval Counties to reflect updated process and logistics.
- Completed the transition the local coordination of the abuse and neglect mediation program under the coordination of the Director of Mediation Program for the 13th Judicial District.

Evaluation Data Collection Activities. The local coordinator gathered and provided evaluation forms to the AOC. The local coordinator also assisted with the dissemination of a new survey for the professional participants, developed by the program, to gain specific feedback from Department attorneys, respondents' attorneys, guardians' ad litem, social workers, and others.

Referrals. Approximately forty (40) mediations were scheduled in the Thirteenth Judicial District (Sandoval, Valencia, and Cibola Counties) during the grant period. This is a 14% increase over last year's referrals. Twenty-four mediations were held in Sandoval County, 13 in Valencia County and 3 in Cibola County. The Thirteenth Judicial District continues to mediate at all stages of the abuse and neglect cases including pre-legal cases and during the stages of pre-permanency, permanency, and termination. The recently developed plan for Cibola County includes a collaborative mediation process that provides for mediating with families involved in other concurrent cases within the Family Court. The project continues to enjoy the support of the Children's Court Judges, CYFD staff, and court appointed attorneys.

2. Training Activities

One two-day Mediator training, one half-day Participant training, and informal local mediator workshops were offered this year. A summary of each training follows:

Mediator Training

The required 16-hour training was offered to the newest mediation site in Cibola County in the Thirteenth Judicial District on September 23-24, 2004 in Grants and attended by prospective mediators and several CYFD staff members. The training was held at no cost and both CLE and CEU credits were available. Susan Malone was the lead trainer and other mediators (Marianela Gish and Kay Ohmberger), and statewide and local coordinators (Teresa Berry and Terri Rehman) delivered the training. Other presenters were: Susannah Burke, a therapist with Peanut Butter and Jelly in Albuquerque; a CYFD attorney (Bernadine Martin/Grants and Gallup), and a panel that included a CYFD social worker (Doris Garcia/Bernalillo), Children's Court Judge (Hon. John Romero/Albuquerque), respondent's attorney (Angela Varnardo/Bernalillo), guardian ad litem (Leslie Jones/Bernalillo), and mediator (Kay Ohmberger/Albuquerque). The agenda included a brief history and overview of the project; the legal context of the child welfare system in New Mexico; a discussion about issues impacting families with CYFD and their impact on the mediation process; viewing and discussion of the project video; an interactive session with a panel of professionals; a discussion of various mediation models; review of the role of the mediator; a presentation of mediator tips and tools; and two role plays and debriefing sessions. Feedback from the participants was positive. Sample training agendas are included in Appendix C. Additional training materials are available upon request.

Participant Training

Unlike other types of mediation, participants in abuse and neglect cases tend to be "repeat players." The social workers, attorneys, treatment services providers and CASA's are involved in numerous cases. Given the ongoing nature of their participation in the process, it is important that the professionals understand basic mediation principles and their own role in the mediation. The AOC has thus developed "participants' trainings" for social workers, attorneys, CASA's and others who may participate in mediation on a regular basis. These trainings have been provided, free of charge, at each site.

This year, due to the reduction in funding, we were limited to one half-day participants' training. The Thirteenth Judicial District Court provided supplemental funding and support to enable the program to provide a participant training for the newest program site in Cibola County. Teresa Berry and Susan Malone held the training on November 4, 2004 in Grants. It was attended by social workers, attorneys, court staff, CASA, and service providers. The training was designed to convey the purpose of mediating with families involved in abuse and neglect cases and other concurrent cases within the Family Court, and to increase the understanding of the professional participant's role during mediation.

Other Training Activities

The statewide coordinator also conducted an abuse and neglect overview course for a MSW class at Western New Mexico State to orient the students to the Children's Court Mediation Project. A new video created for training professional participants in abuse and neglect training was included in the agenda.

In lieu of more formal training, the statewide project coordinator and the local coordinators have met with PSD staff, CASAs, GALs, and Respondent Attorneys to discuss ways to improve the mediation process and provide tips on how to be an effective participant in mediation.

3. Statewide Coordination Efforts

One of the ongoing strengths of this project has been the coordination between each of the project sites. Information and shared resources have allowed for the delivery of quality mediation services. This year, the statewide coordinator conducted site visits at each project site, and met with each Implementation Team to discuss the status of the statewide project, review the evaluation report for FY2004, and offer assistance to the individual programs. Additionally, the local coordinators met regularly either in person or by conference call to discuss administrative as well as programmatic issues. Finally, an annual "strategic planning" meeting was held to discuss and strategize a plan for FY2006. The summary of that meeting is included in Appendix D.

Efforts have also continued to work with other mediation programs and groups. The statewide coordinator participated in ongoing and regular discussions with the directors of other publicly funded ADR programs sharing program development and evaluation data and resources benefiting all of the programs. The statewide coordinator was also asked to join the Alternative Methods of Dispute Resolution Committee of the State Bar of New Mexico, and participated in the development of a Mediation Confidentiality Statute that was introduced in the past legislative session, but was later tabled by the ADR committee to further review.

4. Provide Ongoing Support to Local Mediators

During the past year, the AOC contracted with thirty-four (34) mediators. All mediators must have a minimum of 40 hours of basic mediation training with an additional sixteen (16) hours

of training in mediating abuse and neglect cases. Our mediators come from a variety of backgrounds including business, education, social work, counseling, and the law. As a group, they have experience mediating family, divorce, custody, business, magistrate court, victim-offender, special education, employment discrimination, and workplace dispute matters. They are experienced and highly skilled, and nearly every all of them agree that mediating in abuse and neglect cases is some of the most challenging and at the same time some of the most rewarding work they have done.

Mediating abuse and neglect cases is difficult. Emotions often run high as parents are faced with the possibility of permanently losing their children. The social services and legal systems are complex and confusing to families involved in these cases. Families may feel helpless and powerless in a situation that seems to leave them little choice. At the same time, the social workers, attorneys, CASAs, and treatment service providers may also struggle with the professional and personal challenges associated with abuse and neglect cases. The mediator must create an environment where each person has an opportunity to speak and be heard, where emotions are acknowledged and issues are identified, and where mutually acceptable and realistic agreements are reached.

The success of the program depends in large part upon the skill and expertise of the mediators. Due to a lack of funds to offer ongoing training, the statewide and local coordinators provided less formal training, along with support and feedback to the mediators. Statewide, mediators attended local mediation meetings to discuss program issues and concerns. The Second Judicial District held 'skills sessions' during their regularly scheduled quarterly meetings.

5. Program Evaluation

Ongoing program evaluation has been a critical and core component of this project. Each year we have used the evaluation results to refine and strengthen the project. The mediation evaluation has traditionally been included as part of CYFD's evaluation of its family preservation projects. The statewide coordinator and AOC worked with the with CYFD's evaluator, Marah Moore to finalize the evaluation report for 2004 and to discuss recommendations for future evaluations.

Due to budget reductions for this grant period, the project worked with CYFD to develop a plan for an internal evaluation. We continued to distribute feedback forms to parents and children (when participating in mediation), created a survey (replacing the previously used feedback form) that was sent out to all professional participants in abuse and neglect mediation, and conducted informal interviews with various professional participants. The project developed a database to capture all pertinent information and the results and analysis of this survey are included in Appendix E.

CONCLUSION

After five years, we no longer continue to characterize the Children's Court mediation project as a pilot program. However, the project remains dependent on CYFD grant funding. CYFD's clear commitment through its multi-year funding has contributed to the overall success of the program while allaying the concern that it will "disappear" when the grant period ends. This year, the severe reduction in CYFD funding and the uncertainty of the renewal of our grant for FY 2006 accelerated our goal to insure that the project is sustainable in the long-term.

In our effort to secure permanent funding, we worked with the AOC and other stakeholders in support of the *1% for Children Initiative* during the past legislative session. While falling short to obtain full funding, the project received some general funds to cover administrative costs. In addition to the renewal of the CYFD grant for mediation services, the project was able to finalize a budget so that we will be able to provide the same general level of service to families for the coming year. With the understanding that the CYFD grant may not be renewed again in FY 2007, we will continue to work with the judiciary and legislature to establish more permanent funding for abuse and neglect cases.

The AOC and CYFD have successfully collaborated to offer high quality mediation services to the families that we serve. In addition to helping the families, this partnership has also benefited our two agencies, and is an excellent example of what is possible when two state agencies combine their best resources. Together we have positively impacted over 1,311 families during the past five years. With strong support from CYFD and the local courts, the Children's Court mediation project has demonstrated that even with increasingly limited resources, we can effectively serve New Mexico's families by offering them an opportunity to fully participate in the decisions being made about their lives. We look forward to continuing to work with CYFD to offer mediation services to families and children.

CHILDREN'S COURT MEDIATION PROJECT EVALUATION REPORT

INTRODUCTION

The New Mexico Children's Court Mediation Project provides mediation services for families of the Child Protective Services Division (PSD) of the New Mexico Children's, Youth and Families Department (CYFD). The goal of the program is to assist in meeting the Adoption and Safe Families Act (ASFA) goals of permanency, child safety and child-well-being, by attempting "to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest." (NMSA 1978, §32A-4-19, RULE 10-320 NMRA).

The Children's Court Mediation Project has provided mediation services to families since 2000 in several New Mexico counties. Implementation teams at each site include Children's Court Judges, Children's Courts attorneys, Guardian ad Litem, representatives from the PSD county offices, court appointed Respondents' Attorneys, and CASA volunteers. Cases are mediated at all stages of pre-legal and legal cases from investigation to termination. The project currently serves families in fourteen counties (Bernalillo, Catron, Chaves, Cibola, Grant, Hidalgo, Lea, Luna, San Juan, Sandoval, Sierra, Socorro, Torrance, and Valencia) in six judicial districts (2nd, 5th, 6th, 7th, 11th, and 13th). Training and community preparation were required of all projects.

For the past four years, the Administrative Office of the Courts (AOC) has provided CYFD with an evaluation of the Children's Court Mediation Project. Due to a significant decrease in funding in FY 04 and 05, the AOC was unable to contract with an independent evaluator. Thus, the evaluation report for this year was completed by the statewide project coordinator, Teresa Berry, and the AOC. This internal evaluation followed the recommendation of last year's report to at a minimum, "continue to collect data, even if it not entered until a later date; revise surveys based on this year's experience and send out to all stakeholders; and do minimal interviews/focused groups in response to last year's data and, possibly, the quantitative and survey data collected during the coming year."¹

We collected and compiled data from the feedback forms from families participating in mediation across all judicial districts and the case records completed by the mediators following each mediation. In addition, we conducted informal interviews with CYFD staff and court personnel and also introduced a new evaluation tool. Per the recommendation from last year's report, we developed a survey for the professional participants in mediation. This survey was used in the place of the participant feedback form that has been used and modified several times over the past five years.

Due to budgetary constraints, we have only been able to provide broad, and sometimes cursory analyses. We are still not able to determine conclusively if mediation works, either in relationship to system improvements or better outcomes for families and children. As expected, a much more extensive evaluation process will need to be undertaken. Recommendations from past evaluations state that a controlled study would have to be conducted, comparing mediated cases with a sample of similar unmediated cases. With such a study, we would be able to learn more about the efficacy of the project with some degree of validity and reliability.

¹ Court Mediation Project Report, October 29, 2004. Prepared for the AOC, CYFD – PSD by Community & Family Services, Inc.

METHODS

The evaluation of the New Mexico Mediation Program was conducted from July 1, 2004 through April 30, 2005 and consisted of four parts:

- Review of Case Records;
- Review of Feedback Forms;
- Review of Participant Survey; and
- Informal Interviews.

Review of Case Records

Following the completion of each mediation, the mediator must fill out a case record. The purpose of this form is to capture demographic information, basic information about the case, and the mediator's perspective of the quality of the mediation process. The specific data gathered includes:

- **Case No. (JQ/FACTS)**
- **Family Name**
- **# of children involved**
- **Judicial District**
- **County**
- **Date of Mediation**
- **Stage of case** (pre-legal/investigation); pre-adjudication; pre-judicial review; pre-permanency; termination; other
- **Reason for referral** (physical abuse; sexual abuse; neglect; emotional abuse; abandonment; substance abuse; mental health concerns; other)
- **Family Ethnicity** (Asian American; African American; Hispanic; Native American; White; Mixed Race; Other)
- **Length of mediation**
- **Who attended** (parent(s); parent(s) attorney; child(ren); GAL; SW; SWS; CCA(PSD attorney); Relatives; Friends; Foster Parents; SW Consultant; Other)
- **Issues discussed** (plea; legal issues; removal of child (ren); placement; visitation; services for parents; services for children; treatment plan development; treatment plan compliance; relationships between parties; parent-child relationships; divorce (custody) issues; safety plan development; other)
- **Issues where agreement was reached** (plea; legal issues; removal of child (ren); placement; visitation; services for parents; services for children; treatment plan development; treatment plan compliance; relationships between parties; parent-child relationships; divorce (custody) issues; safety plan development; other)

Review of Feedback Forms

Immediately following each mediation session, written evaluations are administered to the families. These evaluation forms are designed to obtain qualitative feedback on the mediation process, and measure the effectiveness of the mediation sessions. Specifically, the feedback forms provide a source of the following information:

- **Source of information about mediation** (SW; attorney; mediator; judge/special master; video; brochure; other)
- **Satisfaction level**
- **Levels of agreement** (regarding placement, services for family, services for children, and visitation.)
- **Knowledge of the legal process**

A total of 293 mediated cases were used for this review and provide a snap shot of the program. While this is only a partial picture of the program, it does give a view of the questions being evaluated and the perceptions of the participants involved in the evaluation of the program.

Review of Participant Survey

For this evaluation, a participants' survey was developed and distributed to all professionals that either attend mediations or are impacted by the mediation program, including: Attorneys; Guardian ad litem; Social Workers, Social Work Supervisors, Social Work Consultants, County Office Managers, Children's Court Attorneys (CCA -PSD attorney), CASAs, Hearing Officers, and Judges. This survey was distributed in March 2004 to 450 participants. We received back 86 responses. The purpose of the survey is to gain qualitative feedback from the professionals about the mediation process and their perceptions about how mediation impacts on their clients. The specific data gathered includes:

- **Satisfaction level** (about the process)
- **Levels of agreement** (regarding services and visitation)
- **Impact on quality of treatment plans**
- **Impact on compliance**
- **Benefit of mediation to families**
- **Quality and consistency of mediators**

SERVICES PROVIDED

Data for services provided was collected through the review of the case records completed by the mediators following each mediation session. The project provides mediation services at all stages of pre-legal and legal abuse and neglect cases from investigation to termination.

Number of Cases Mediated

We were able to receive data from the case records for 293 families. The mediations occurred between July 1, 2004 and April 30, 2005. Table 1 presents the number of cases we were able to gather data in all six judicial districts. This does not reflect the total number of cases mediated (399) during the grant period July 1, 2004 to June 30, 2005, nor does it adequately indicate the

actual breakdown of the percentage of cases mediated in each district (2nd - 38%; 5th - 9%; 6th - 26%; 7th - 5%; 11th - 12%; 13th - 10%).

Table 1. Number of Cases Mediated by District

Judicial District	Number	Percent
2nd	95	32%
5th	24	8%
6th	91	31%
7th	12	4%
11th	41	14%
13th	30	10%
Total	293	100%

Timing of Mediation

Table 2 outlines two aspects of the timing of mediation. It shows (1) at what stage the mediation took place in all judicial districts and (2) the average amount of time spent in mediation. In the 293 cases for which we have data, 45 had missing information. Therefore, the following information is provided for 248 cases.

When Mediations Occur

While it is varied, most mediations occur at the time of the Pre-Adjudicatory conference (64%). The “other” category includes other stages of an abuse and neglect case as reported by the mediator including the 10-day custody hearing, post judicial review, and post permanency. The breakdown follows last year’s reporting closely with two exceptions, an increase in mediations during the Investigation stage from 6.3% to 12%, and an increase in mediations at the Pre-permanency stage from 10.3% to 13%. The increase during the investigation period reflects both pre-legal referrals and that many of the cases in the 6th Judicial District occur prior to the 10-day custody hearing. The increase in mediations prior to the permanency hearing reflects the new plan in Sandoval County (13th District) to routinely schedule a second mediation to occur in the place of the pre-permanency conference, and the growing interest in mediating cases with Open Adoption as the permanency plan.

Time Spent in Mediation

Table 2 shows that the average amount of time spent in mediation per case was 1 hour and 36 minutes. This indicator has remained constant over the past five years.

Table 2. Timing of the Mediation

	Count	Percent	Total Hours	Average Hours
Investigation	29	12%	41.35	1.43
Pre-Adjudicatory	160	64%	221.71	1.39
Pre-Judicial Review	3	1%	3.75	1.25
Pre-Permanency	32	13%	34.42	1.08
Termination	7	3%	5.62	0.80
Other	17	7%	31.13	1.83
Total	248	100%	337.98	1.36

Who Attends Mediation

The following table reflects the percentages and numbers of individuals who attended the mediation sessions in the sample reviewed. The “other” parties included CASA, additional PSD treatment workers, CYFD interns, stepparents, tribal social workers, mental health providers, crisis center social workers, interpreters, etc.

Table 3. Mediation Attendees

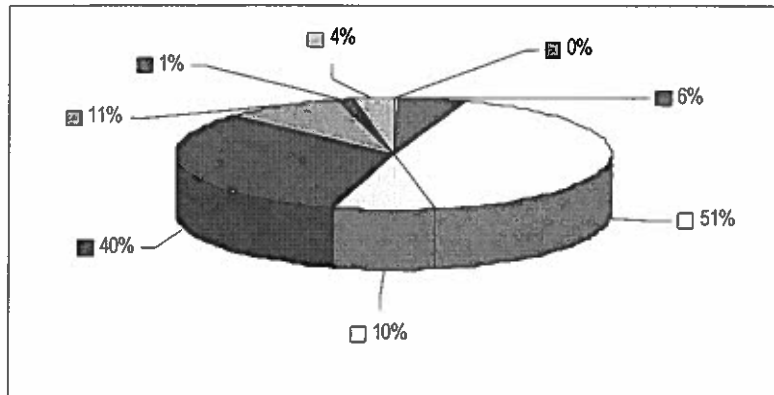
Parties Present	Number of Parties Present	Percentage
Respondent 1	228	78%
Respondent 2	137	47%
Resp Attorney 1	240	82%
Resp Attorney 2	193	66%
Child(ren)	19	6%
GAL	230	78%
Friend(s)	18	6%
Social Worker	254	86%
SW Supervisor	241	82%
PSD Attorney	245	83%
Relative(s)	67	23%
Foster Parent(s)	30	10%
Social Work Consultant	24	8%
Other Parties	96	33%

FAMILY PROFILE

Ethnic/Cultural Background

The ethnicities of the participants were largely White/Non-Hispanic parents (117 parents/40 %) and Hispanic/Latino (150 parents/51%). There were also Native American (29 parents/10%), Black/African American (18 parents/6%), Mixed Race (32 parents/11%) and unidentified (12 parents/4%). These percentages exceed 100%, because some of the mediators indicated more than one ethnicity.

Table 4. Ethnicity

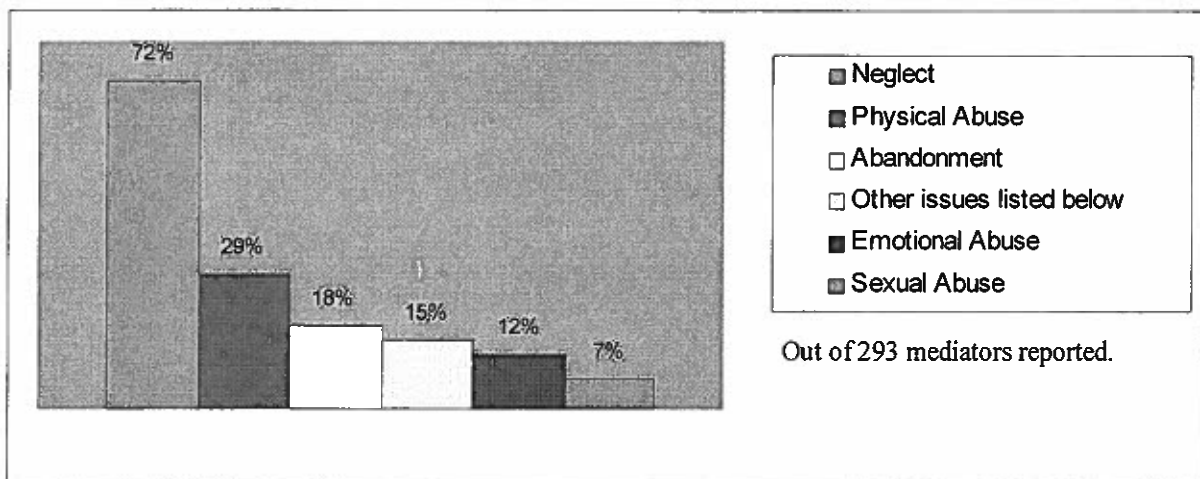


Reasons for Referral

The following issues that brought parents to the child protection system are ranked in order of frequency. Table 5 reflects categories that indicate the legal reason for referrals. At times more than one issue occurs in the referral information:

The other reasons reported by the mediators included issues such as adoption/custody, run away child, drug abuse, homelessness, incarceration of parents, parents fearing child, mental health needs of a family member, placement issues and medically fragile infant. Some cases had more than one type of abuse occurring.

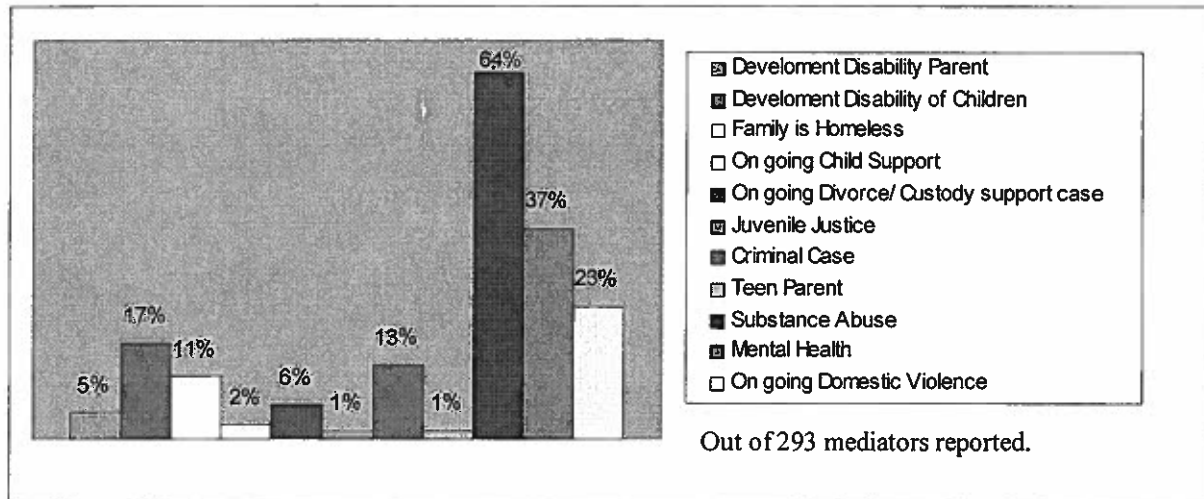
Table 5. Reasons for Referral



Issues Facing Families

Table 6 reveals the common issues experienced by these families as reported by the mediator. They are ranked in order of frequency below. It should be noted that many families had more than one issue. The issues reported this year are consistent with the evaluations for 2003 and 2004.

Table 6. Issues Facing Families



Families Understanding of Mediation

Since 2000, the project has been interested in tracking the families understanding of the mediation process. Several strategies have been implemented over the past few years to help families' understanding of and participation in mediation. In addition to learning about mediation from the professionals, the project uses visual aids including a video, brochure (in English and Spanish) and recently introduced in the Second Judicial District, a "checklist" for parents to review prior to mediation (not included in the data collected). The feedback forms for parents and children allow them to indicate where and how they heard about the mediation process. Although there was a slight increase in the number that reported learning about mediation from the brochure (from 3% in 2004 to 5% in 2005), the visual aids remain the lowest reported. The following table shows that the main source of information about mediation was from the mediators, the attorneys and the social workers.

Table 7. Communication about Mediation, All Districts

Who talked to you about what happens in mediation?	Number	Percent
Mediator	170	70%
Attorney	99	41%
Social Worker	84	34%
Judge/Special Master	8	3%
Other Party	6	2%
Brochure	11	5%
Video	1	0%

Total Surveys Reported 244

PARTICIPANT SATISFACTION

Tables 8 and 9 summarize the satisfaction levels of all the participants. For the purposes of this report, the responses of the parents and those of all the other participants are analyzed individually. This gives the perceptions and feelings of the parents a separate “voice” from that of the professionals. It is noted that some families experienced more than one mediation session. Sometimes parents and others did not respond to all of the questions therefore the percentages are listed to assist in the analysis. The number (n) is provided for each item.

Table 8. Parent/Guardian Satisfaction with Mediation

	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
The mediation was helpful (n=242)	112	46%	120	50%	10	4%
I felt heard and understood (n=239)	125	52%	106	44%	8	3%
I felt the mediation process was fair (n=220)	106	48%	109	50%	5	2%
I received a good introduction to the mediation process (n=221)	140	63%	78	35%	3	1%
The mediator helped to clarify all issues (n=220)	140	64%	75	34%	5	2%
The mediator was neutral and treated me fairly (n=220)	164	75%	52	24%	4	2%
I had an opportunity to present my views (n=217)	147	68%	67	31%	3	1%
The mediator helped develop options (N=216)	118	55%	89	41%	9	4%
I think progress was made in the mediation (n=215)	100	47%	102	47%	13	6%
If problem occurred I would participate in another mediation session (n=216)	183	85%	22	10%	11	5%

Table 9. Professionals Satisfaction with Mediation

	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
I felt heard and understood during mediation (n=72)	39	54%	30	42%	3	4%
The Mediation process was fair (n=80)	40	50%	36	45%	4	5%
Mediation is a helpful tool with the management of my abuse and neglect cases (n=85)	36	42%	41	48%	8	9%

Review of the data shows that most of those who responded indicated a high level of satisfaction with the mediation process. In the written comments, high numbers of cases received total positive statements from all participants. Both parents and professional reported very high levels of agreement (96% for parents and 90% for professionals) that mediation was helpful. Similarly, both groups also agreed that the process was fair (98% for parents and 95% for professionals).

Another important indicator reflecting satisfaction with mediation is if parties would return to mediation at a later date. Table 8 shows that 95% of parents agreed that they would participate in another mediation session. This is an increase from last year where 89% reported that they would return to mediation.

PROGRAM EFFECTIVENESS

There are many indicators that can help measure the level of effectiveness of a mediation program, including cost savings, agreement/settlement rates, and other outcome reporting. There are five areas related to program effectiveness addressed in this report: (1) program evaluation by the professionals; (2) levels of agreement as reported by all parties; (3) system efficiency; (4) treatment plan quality and compliance; and (5) impact on families.

Program Evaluation

We were able to look at how participants evaluated the program in terms of its impact on their clients, the quality of and compliance with treatment plans, the management of their cases, and the overall sense of the quality of mediators. Table 10 below shows that the professionals shared either complete or partial agreement in all these areas (91%-95%), with the exception of treatment plan compliance. There was an 86% rate of complete or partial agreement when asked if mediation helps with compliance of treatment plan. In addition, 95% of the professionals report that the quality of mediators was consistent.

Table 10. Evaluation of the Mediation Program by Professionals

	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
Mediation helps facilitate a good outcome for children in abuse and neglect cases (n=85)	36	42%	42	49%	7	8%
Mediation was helpful to the families (n=86)	27	31%	53	62%	6	7%
The quality of mediators has been consistent (n=78)	20	26%	54	69%	4	5%

Levels of Agreement

Another way to understand the effectiveness of the program is to look at the levels of agreement as reported by the parents, professionals, and the mediators at all sites. While we do not have comparison data from cases not mediated, it is clear from the Tables 11 through 13 below that the mediation process elicits a relatively high level of agreement on critical issues. The best outcome indicator for all parties was for services for parents and children, where all parties shared complete or partial agreement in this area (92%-96%). There was also a similar level of agreement amongst all parties regarding visitation (95% for mediators; 93% for professionals; 89% for parents/guardians).

The responses from the groups this year indicate both an overall higher level of agreement and less discrepancy between the groups as compared to last year's evaluation. In 2004, the parent/guardians reported much less agreement about placement, services, and visitation (24%-36%) than both the professionals and the mediators (74%-78%).² This year, 92%-96% of the professionals and mediators believed there was complete or partial agreement regarding these issues and 83%-94% parents agreed.

Table 11. Levels of Agreement in Mediation as Reported by Mediators

Issue	Consensus Reached					
	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
The plea (n=186)	91	49%	53	28%	42	
Parameters of the trial. (legal issues, witnesses, etc) (n=103)	55	53%	24	23%	24	
Removal of child from home (n=100)	65	65%	18	18%	17	
Placement options (n=195)	99	51%	85	44%	11	
Permanency plan (n=164)	84	51%	65	40%	15	
Visitation plan (n=234)	157	67%	68	29%	9	
Services for parents (n=228)	174	76%	46	20%	8	
Services for child (ren) (n=202)	159	79%	27	13%	15	
Changes needed in home condition (n=140)	83	59%	44	31%	13	
Treatment plan development (n=194)	130	67%	54	28%	10	
Treatment plan and/or compliance (n=169)	120	71%	38	22%	11	
Relationship among the parties (n=174)	92	53%	69	40%	12	
Parent-Child relationship issues (157)	92	59%	54	34%	11	
Family rule (n=61)	38	62%	17	28%	6	
Divorce mediation (n=31)	25	81%	5	16%	3	
Safety plan development (n=59)	40	68%	15	25%	4	
Other issues addressed (n=26)	23	88%	3	12%	0	

² Court Mediation Project Report, October 29, 2004. Prepared for the AOC, CYFD – PSD by Community & Family Services, Inc.

Table 12. Levels of Agreement in Mediation as Reported by Professionals

Issue	Consensus Reached					
	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
Mediation helps parties reach agreement regarding services (n=84)	26	31%	54	64%	4	5%
Mediation helps parties reach agreement regarding visitation (n=86)	19	22%	61	71%	6	7%

Table 13. Levels of Agreement in Mediation as Reported by Parents

Issue	Consensus Reached					
	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
We agreed on where my child (ren) will live (n=204)	90	44%	79	39%	35	17%
We agreed on services for our family (n=222)	98	44%	110	50%	14	6%
We agreed on services for my child (ren) (n=207)	97	47%	96	46%	14	7%
We reached agreement on a visitation plan (n=217)	112	52%	81	37%	24	11%

System Efficiency

Unfortunately, we were unable to comprehensively review one level of system impact that has been addressed in previous evaluations, the impact of the mediation process on *system efficiency*. While increasing efficiency (e.g. decreasing or maximizing the use of resources) is an important end in its own right, we do not know if there is a direct link to improved family/child outcomes. It is, however, an important metric for the both the courts and CYFD to learn more about. For instance, we know from recent studies regarding court-related mediation programs that there is a clear cost savings.³ Judges, for example, noted the decrease in judicial time, and, generally, felt positive about the project. They also spoke of changes in the outcomes for cases. One Judge indicated that he could “*tell when a case had been to mediation because the parties seem to be ready to work together in the best interest of the children.*” In addition, several of the CYFD attorneys report anecdotally that there is a significant cost saving to mediating cases prior to termination as those trials can be lengthy and require expert and witness testimonies. Interviews and focus groups reinforced the findings that there was a decrease in the use of judicial resources through the use of mediation.

The summary comments from the professional surveys and individual interviews with the court professionals indicate that there continues to be a marked reduction of the utilization of court

³ *Evaluation of the Early Mediation Pilot Program*, Heather Anderson, California Administrative Office of the Courts, 2004, <http://www.courtinfo.ca.gov/reference/documents/empprept.pdf>.

Court-Ordered Civil Case Mediation in North Carolina: An Evaluation of Its Effect, Steven H. Clarke, Elizabeth D. Ellen and Kelly McCormick. Institute of Government, UNC, 1996.

resources as a result of the mediation program. *One social work supervisor tells us, "The mediation has helped resolve issues that parents have regarding department involvement. Our mediations have reduced court time and enhanced worker/client working relationships."* A Children's Court attorney also reports that the mediation project *"is an excellent tool for increasing efficiency and make the most of everyone's time – state personnel, court appointed attorneys, and respondents alike."*

Several professionals noted the reduction of time in court following mediation or the ability to vacate a hearing due to mediation. Judges reported that longer hearings are much less frequent, and even when they occur, some of the issues that might have been brought to court are already resolved. This leaves the focus of the hearing on the key issues of contention. Again this year, professionals claim that the mediation process reduces hidden court costs such as time and expenses for groups such as expert witnesses, psychologists and medical staff who are frequently retained by the court to assist in judicial decision-making. Reductions are pronounced for attorneys, who indicated that the time up front in mediation was large but the reduction of overall time after mediation was reduced. Most participants agree that answers were found in collaborative styles and methods rather than the adversarial process.

Treatment Plan Development and Compliance

Another important indicator of the effectiveness of the mediation process is treatment plan development and quality. The goal of introducing mediation into the legal system when addressing custody issues in cases of child abuse and neglect is, for the most part, to engage families into the development of treatment plans thereby increasing the quality of and compliance with those collaborative plans. This is a systemic change that should lead to better outcomes. For example, if parties develop a more collaborative and appropriate treatment plan, compliance with treatment plans would be increased, thereby enhancing family and child outcomes.

In addition to increased compliance, there are a number of interrelated factors in the development and implementation of the treatment plan that may be impacted by the mediation process including: the quality of relationship developed between professionals as well as between the professionals and the families; the overall tone of the treatment planning and legal process; and an increase in the number of options for families. These are factors that have a direct relationship to the ultimate quality of the treatment plan developed. Table 14 below shows that 90% of the social workers, attorneys, and other professionals believe that mediation helps to increase the quality of treatment plans. Table 14 also indicates that fewer professionals were confident that mediation helped with compliance (86%). We were unable to review court and CYFD files to confirm this finding.

Table 14. Quality of Treatment Plan and Compliance

	Complete Agreement		Partial Agreement		No Agreement	
	Number	Percent	Number	Percent	Number	Percent
Mediation helps to increase the quality of the treatment plans (n=86)	23	27%	54	63%	9	10%
Mediation helps increase compliance with treatment plans (n=84)	16	19%	56	67%	12	14%

Family Impact

This report addresses two levels of outcomes related to changes for families and children: the immediate outcomes related to the families engagement in the legal process when faced with abuse and neglect charges; and mid-term outcomes related to the families compliance with the treatment plan as discussed above. Long-term outcomes related to re-referral and placement subsequent to case closure are not addressed. In future evaluation studies these issues will be important to address in order to provide a more comprehensive picture of the process and efficacy of the mediation program.

Immediate outcomes fall out into two primary areas: the families increased knowledge and understanding of the legal process, and a sense of empowerment families have gained related to their participation in mediation. Together these two areas help families to become more active participants in the process, as well as to gain a greater degree of “ownership” and commitment to both the process and permanency for the family.

Family Knowledge of the Legal System

Table 15 shows that parent/guardians report no increase in the knowledge of the legal system. Sixty percent of the parent/guardians report that mediation is helpful in understanding how the court works. Their responses are consistent with the responses in the 2004 evaluation report.

Table 15. Knowledge of the Legal System

Mediation helps me understand how the court works	Year		
	2001 - 2002	2003 - 2004	2004-2005
Complete Agreement (Very Helpful)	32%	31%	31%
Partial Agreement (Somewhat Helpful & Helpful)	68%	61%	60%
No Agreement (Not Helpful)	0	8%	9%

Family Empowerment

Based on the comments from the parents’ feedback forms, families are given a voice and feel safe to express themselves through the mediation process. Providing *voice* and *safety* for families increases the families’ willingness and capacity to participate in the process. Enhancing family participation by giving families a voice in the process and increasing their sense of safety has the effect of *empowering* families though building partnerships, as one parent reported, “the system works when one cooperates.” A more collaborative environment typically provides more opportunities for discussion and new options. Another parent reflected that “there is room for change and room to disagree,” and that the mediation was, “helpful and uplifting, it made me fill as though there is hope and help.”

Feedback from the professionals supports the positive response of families to the mediation process. In *Table 10. Evaluation of the Mediation Program by Professionals*, 93% of the professionals reported that the mediation was helpful to the families they work with.

RECOMMENDATIONS

A more comprehensive study is clearly needed to adequately address the overall question: *Does this mediation program work?* While the qualitative data gathered over the past five years seems to indicate that mediation contributes to system improvements and better outcomes for families, more quantitative data is needed to either substantiate or refute those perceptions. In an effort to meet that need, the program is working towards securing permanent funding to adequately evaluate the program in the following areas:

- Review Court and CYFD records relating to mediated abuse and neglect cases.
- Resume formal interviews and/or focus groups to follow-up with evaluation results.
- Conduct a controlled comparative study.

Given the continued budget constraints for FY 2006, we will continue to gather the data reviewed in this evaluation report.

APPENDIX F MEDIATION OUTCOME REPORTING FORMS

PARENT/GUARDIAN & CHILD FEEDBACK FORMS

PARTICIPANT SURVEY

CASE RECORD

CHILDREN'S COURT MEDIATION PROGRAM **PARENT/GUARDIAN FEEDBACK**

As part of the evaluation of the Mediation Project, we would like your feedback about your mediation process. Please take a moment and respond to the items below. When you are finished, put your form in the envelope addressed to the project evaluators. Your name is not needed on this form, and your responses will be kept completely confidential. **Thank you.**

Date of Mediation ____/____/____ Time _____ Mediator _____

Please indicate your role in this case: __Parent __Guardian

For each of the statements below, please circle the response that best tells us what you think:

1. The mediation was helpful.	Not Helpful	Somewhat Helpful	Helpful	Very Helpful	
2. The mediation helped me understand how the court works. (if applicable)	Not Helpful	Somewhat Helpful	Helpful	Very Helpful	
3. We agreed on where my child (ren) will live. (if applicable)	No agreement	Slight Agreement	Significant Agreement	Complete Agreement	N/A
4. We agreed on services for our family. (if applicable)	No agreement	Slight Agreement	Significant Agreement	Complete Agreement	N/A
5. We agreed on services for my children. (if applicable)	No agreement	Slight Agreement	Significant Agreement	Complete Agreement	N/A
6. We reached agreement on a visitation plan. (if applicable)	No agreement	Slight Agreement	Significant Agreement	Complete Agreement	N/A
7. I felt heard and understood.	Not at all	Somewhat	Mostly	Totally	
8. I felt the mediation process was fair.	Not at all	Somewhat	Mostly	Completely	

9. I received a good introduction to the mediation process.	Not at all	Somewhat	Mostly	Completely
10. The mediator helped to clarify all issues.	Not at all	Somewhat	Mostly	Completely
11. The mediator was neutral and treated me fairly.	Not at all	Somewhat	Mostly	Completely
13. I had an opportunity to present my views.	Not at all	Somewhat	Mostly	Completely
14. The mediator helped develop options.	Not at all	Somewhat	Mostly	Completely
15. I think progress was made in the mediation.	Not at all	Somewhat	Mostly	Completely
16. If problems occurred I would participate in another mediation session.	No	Maybe	Yes	Absolutely Yes

17. If no, why not?

18. Who talked to you about what happens in mediation? Check all that apply.

<input type="checkbox"/> Social Worker	<input type="checkbox"/> Video
<input type="checkbox"/> Attorney	<input type="checkbox"/> Brochure
<input type="checkbox"/> Mediator	<input type="checkbox"/> Other
<input type="checkbox"/> Judge/ Special Master	

19. What was the most helpful thing you learned?

20. Parent Comments:

CHILDREN'S COURT MEDIATION PROGRAM

CHILD FEEDBACK

As part of the evaluation of the Mediation Project, we would like your feedback about your mediation process. Please take a moment and respond to the items below. When you are finished, put your form in the envelope addressed to the project evaluators. Your name is not needed on this form, and your responses will be kept completely confidential. **Thank you.**

Date of Mediation ____/____/____ Time _____ Mediator _____

For each of the questions below, please circle the answer which best fits, what you think.
Answer not applicable is it does not apply to your situation:

- | | | | | | |
|--|--------------|------------------|-----------------------|--------------------|----------------|
| 1. The mediation was helpful. | Not Helpful | Somewhat Helpful | Helpful | Very Helpful | |
| 2. The mediation was helpful to me in understanding how the court works. | Not Helpful | Somewhat Helpful | Helpful | Very Helpful | Not Applicable |
| 3. Agreement on where I will live was reached. | No agreement | Slight Agreement | Significant Agreement | Complete Agreement | Not Applicable |
| 4. An agreement on the services to my family was reached. | No agreement | Slight Agreement | Significant Agreement | Complete Agreement | Not Applicable |
| 5. I agreed with the services offered to me. | No agreement | Slight Agreement | Significant Agreement | Complete Agreement | Not Applicable |
| 6. I agreed with the visitation plan. | No agreement | Slight Agreement | Significant Agreement | Complete Agreement | Not Applicable |
| 7. I felt heard and understood. | Not at all | Somewhat | Mostly | Totally | |

1. I felt mediation process was fair.	Not at all	Somewhat	Mostly	Completely
2. I received a good introduction to the mediation process.	Not at all	Somewhat	Mostly	Completely
3. The mediator listened and clarified all the issues?	Not at all	Somewhat	Mostly	Completely
4. I felt the mediator was neutral and treated me fairly.	Not at all	Somewhat	Mostly	Completely
5. I had an opportunity to present your views during the mediation process.	Not at all	Somewhat	Mostly	Completely
6. The mediator helped me and my family develop options.	Not at all	Somewhat	Mostly	Completely
7. The mediator helped me communicate and resolve conflicts with my parents.	Not at all	Somewhat	Mostly	Completely
8. I feel progress was made in the session.	Not at all	Somewhat	Mostly	Completely
9. If problems occurred I would be willing to participate in another mediation session.	No	Maybe	Yes	Absolutely Yes
10. If no, why not? _____				
11. Who talked to you about what happens in mediation? Check all that apply.				
<input type="checkbox"/> Social Worker	<input type="checkbox"/> Video			
<input type="checkbox"/> Attorney	<input type="checkbox"/> Brochure			
<input type="checkbox"/> Mediator	<input type="checkbox"/> Your Parents			
<input type="checkbox"/> Judge/ Special Master	<input type="checkbox"/> Your Foster Parents			
<input type="checkbox"/> Your Guardian	<input type="checkbox"/> Other _____			
12. What was the most helpful thing you learned about mediation? _____				
13. Child Comments:				

Children's Court Mediation Program Participant Survey

The following questions are designed to help assess the Children's Court Mediation Program for the New Mexico Administrative Office of the Courts and Children Youth and Families Department. Please take sufficient time for thoughtful reflection before responding. **Your name is not required**, but identify the location(s) where you work. Your responses will be kept confidential. Please return your completed survey to **Louise Baca-Sena, Court Services Division Director, Administrative Office of the Courts, 237 Don Gaspar, Santa Fe, NM 87501** or fax to 505-827-4824 by <>. Thank you.

Your Role: _____ Guardian ad Litem
 _____ Social Worker/Supervisor/COM
 _____ Children's Court Attorney
 _____ Respondent Attorney
 _____ CASA
 _____ Judge/Hearing Officer

Location: _____ Judicial District
 _____ County

When reflecting on your cases that utilized mediation starting July 1, 2005, *circle* the response for each statement below that best tells us what you think.

- | | | | | |
|-----|---|----------------|----------------|------------------|
| 1. | Mediation helped facilitate a good outcome for children in abuse and neglect cases. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 2. | Mediation was helpful to the families. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 3. | Mediation helped to increase the quality of the treatment plans. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 4. | Mediation helped increase compliance with treatment plans. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 5. | Mediation helped parties reach agreement regarding the following issues: | | | |
| | Services | Do Not Agree | Somewhat Agree | Mostly Agree |
| | Visitation | Do Not Agree | Somewhat Agree | Mostly Agree |
| | Placement | Do Not Agree | Somewhat Agree | Mostly Agree |
| 6. | I felt heard and understood during mediation. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 7. | The mediation process was fair. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 8. | The quality of mediators has been consistently high. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 9. | Mediation is a helpful tool with the management of my abuse and neglect cases. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |
| 10. | I would participate in future mediations to help resolve issues in abuse and neglect cases. | | | |
| | Do Not Agree | Somewhat Agree | Mostly Agree | Completely Agree |

Is there anything you would like to add regarding overall program? *Please use reverse side.*

Please indicate below if we may contact you to follow-up with your responses to this survey.

Name _____ Phone _____ E-mail _____

CHILDREN'S COURT MEDIATION PROGRAM

CASE RECORD

A. Family Information

1. Family name _____ 2. County/District _____
3. CYFD FACTS # (if applicable) _____ 4. Court case # (if applicable) _____
5. Judge (if applicable) _____ 6. Mediator _____
7. CYFD custody date (if applicable) ____/____/____ 8. # of children _____
9. # of children in legal custody _____ 10. # of children in non-legal custody _____
13. Reason for CYFD referral or custody (check all that apply):

- | | |
|-------------------------|-------------------------------|
| _____ 1. physical abuse | _____ 4. emotional abuse |
| _____ 2. sexual abuse | _____ 5. abandonment _____ |
| _____ 3. neglect | _____ 6. other; specify _____ |

14. Ethnicity of family:

- | | |
|--------------------------------|-------------------------------------|
| _____ 1. Asian American | _____ 2. Native American |
| _____ 3. Black/African America | _____ 4. White/Non-Hispanic |
| _____ 5. Hispanic/Latino | _____ 6. Mixed Race, identify _____ |
| _____ 7. Other; specify _____ | _____ 8. Unidentified |

15. Special characteristics of family (check all that apply):

- | | |
|--|---|
| _____ 1. mental health (parent/s) | _____ 2. mental health (child/ren) |
| _____ 3. substance abuse (parent/s) | _____ 4. substance abuse (child/ren) |
| _____ 5. developmental disability (parent/s) | _____ 6. developmental issues (child/ren) |
| _____ 7. ongoing domestic violence case | _____ 8. ongoing juvenile justice case |
| _____ 9. family is homeless | _____ 10. victim is teen parent |
| _____ 11. ongoing divorce/custody issues | _____ 12. criminal case filed/pending |
| _____ 13. ongoing child support issues | |

B. Mediation Information

1. Date: ____/____/____ Time _____ 2. Length of session: _____ hours _____ minutes
3. Length of preparation for session ____ hours ____ minutes
4. Length of follow-up time ____ hours ____ minutes
5. Timing: ____ Investigation ____ Pre-Permanency Hearing
- ____ Pre-Custody Hearing ____ Permanency Issues/Open Adoption
- ____ Pre-Adjudicatory Hearing ____ Termination
- ____ Pre-Judicial Review ____ Other; specify _____

6. Parties Present:

	Yes	No	NA
Respondent 1			
Respondent 2			
Resp. 1's Atty			
Resp. 2's Atty			
Child/ren			
GAL			
Youth Attorney			

	Yes	No	NA
Social Worker			
SW Supervisor			
PSD Attorney			
Relative(s)			
Foster Parent(s)			
Friends			
Other			

7. Issues Addressed/Consensus Reached (if applicable):

Issue	Consensus Reached?				
	Yes 1	Partial 2	No 3	Not Addressed 4	Not Applicable 5
The plea					
Parameters of the trial (legal issues, witnesses, etc.)					
Removal of child from home					
Placement options					
Permanency plan					
Visitation Plan					
Services for parents					
Services for children					
Changes needed in home conditions					
Treatment plan development					
Treatment plan and/or compliance					
Relationships among the parties					
Parent-child relationship issues					
Family Rules					
Safety plan development					
Relinquishment					
Open Adoption					
Termination of Parental Rights					
Other (_____)					

C. Mediator Comments *(Please continue on back if needed.)*

APPENDIX G MEDIATOR ASSESSMENT INSTRUMENTS

MEDIATOR ASSESSMENT FORM

MEDIATOR PROFESSIONAL DEVELOPMENT QUESTIONS

MEDIATOR ASSESSMENT

Mediator Name _____ Date _____

Observer's Name _____

Opening the Process	Demonstrates Competence	Needs to Improve	Absent or Problematic	Unable to Observe
Explains mediation in a clear and helpful way				
Provides information about confidentiality, role of the mediator, caucus, etc.				
Empowers parties to decide about participation and setting the agenda,				
During the Process – General characteristics				
Remains calm and centered				
Remains optimistic and encouraging about the process				
Maintains neutrality and avoids taking sides				
Avoids giving own views and/or advice				
Respects parties and their issues				
Maintains control of the process				
During the Process – Specific skills				
Demonstrates good listening skills				
Uses reframing, reflection and summary appropriately to help parties				
Empowers participants to define issues and decide order of discussion				
Clarifies areas of agreement and disagreement				
Encourages participants to acknowledge new information or understanding				
Keeps process focused on key issues				
Frames group decisions clearly				
Helps participants summarize progress and recognize accomplishments				
Reviews any written agreement with participants				
Discusses next steps with parties if appropriate				

Additional observations:

Interview/Self-Evaluation Questions:

What did you do in this session that you think worked well?

In what areas do you think you could improve?

Discuss your sense of your progress and overall skills as a mediator.

CHILDREN'S COURT MEDIATION PROGRAM

PROFESSIONAL DEVELOPMENT REVIEW TOPICS FOR MEDIATORS

1. Describe your confidence level regarding your ability to mediate A&N cases.
2. What do you regard as your strongest mediation skills?
3. What specific skills would you like to further develop?
4. Have you received the support you need to effectively perform this function?
5. Please identify any specific training needs.
6. Can you establish at least two goals for the next year?
7. Do you have any other general comments or concerns?

APPENDIX H: MODEL STANDARDS OF CONDUCT FOR MEDIATORS

**MODEL STANDARDS OF CONDUCT
FOR MEDIATORS**

AMERICAN BAR ASSOCIATION

AMERICAN ARBITRATION ASSOCIATION

ASSOCIATION FOR CONFLICT RESOLUTION

AUGUST 2005

The Model Standards of Conduct for Mediators

August 2005

The *Model Standards of Conduct for Mediators* was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

The use of the term "shall" in a Standard indicates that the mediator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term "mediator" is understood to be inclusive so that it applies to co-mediator models.

¹ The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

² Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

³ Proposed language. No organization as of April 10, 2005 has reviewed or approved the 2005 Revision.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

- A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
 - 1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.
 - 2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

STANDARD II. IMPARTIALITY

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
 - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.
- B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.
 - 2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
 - 3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.
- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.
 - 1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
 - 2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
 - 3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.
- C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

STANDARD VI. QUALITY OF THE PROCESS

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
 - 1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.

2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.
4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.
6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.

- B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
- C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.
 - 1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 - 2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.
- B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD VIII. FEES AND OTHER CHARGES

- A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
 - 1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
 - 2. A mediator's fee arrangement should be in writing unless the parties request otherwise.

- B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.
 - 1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
 - 2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

- A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:
 - 1. Fostering diversity within the field of mediation.
 - 2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
 - 3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
 - 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 - 5. Assisting newer mediators through training, mentoring and networking.
- B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

APPENDIX I INFORMATIONAL MATERIALS FOR FAMILIES

QUESTIONS FOR PARENTS

BROCHURE

QUESTIONS TO ANSWER BEFORE YOUR MEDIATION

- ✓ **What is the most important thing you want people to know about your family at the mediation?**

- ✓ **What services do your children need? Medical? Dental? Counseling? School? Other?**

- ✓ **What services would help you? Transportation? Medical? Drug or alcohol treatment? Grief counseling? Employment? Life skills? Other?**

- ✓ **How often can you visit with your children? Do you work? What is your current schedule?**

- ✓ **If your children can't live with you, who can they live with? Can you recommend any relatives or friends?**

- ✓ **Are you aware of the Children's Code Timelines?**

- ✓ **Have you talked with your attorney about reaching a plea agreement or going to trial?**

Thanks. Please remember to bring this document with you and arrive 30 minutes early for your mediation.